(24,614)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 395.

VANDALIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA AS THE SUCCESSOR OF THE RAILROAD COMMISSION OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

INDEX.

	Original.	Print
Caption	*a*	1
Transcript of record from the superior court of Marion county.	1	1
Placita	1	1
Complaint	2	1
Order of railroad commission	5	3
Order of railroad commission	15	8
Appearance for defendant	22	11
Motion for leave to amend complaint	23	11
Order granting leave to amend complaint	24	12
Amendments to complaint	25	13
Leave to further amend complaint, etc	27	14
Motion to require plaintiff to answer questions, &c	28	15
Motion for leave to amend, &c	30	16
Motion for leave to further amend the first paragraph of complaint and amendments	31	16
Order granting leave to amend	34	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 14, 1916.

	Original.	Print
Motion by plaintiff for leave to further amend second paragraph of complaint and amendments	35	18
Order granting leave to amend	38	20
Demurrer to first paragraph of second amended complaint	39	20
Answer to first and second paragraphs of second amended complaint	41	21
Motion and order to amend answer	49	25
Demurrer to amended answer to first paragraph and second paragraph of second amended complaint	51	26
Demurrer to answers overruled and exception	51	26
Judgment	52	27
Appeal granted	52	27
Appeal bond	53	27
Approval of appeal bond	54	28
Præcipe for transcript of record	55	28
Clerk's certificate to transcript	56	29
Assignment of errors	57	29
Minute entries	58	30
Orders extending time, etc	58	30
Petition and order to advance, etc	59	30
Additional authorities filed, etc	60	30
Order granting leave to correct brief	61	31
Opinion, Erwin, J	63	32
Judgment	71	38
Petition for rehearing	73	39
Order denying petition for rehearing	75	39
Petition for a writ of error	77	40
Assignment of errors	79	41
Bond on writ of error	83	42
Writ of error	85	43
Citation and service	88	44
Præcipe for transcript of record	90	45
Clerk's certificate	91	46

a STATE OF INDIANA:

In the Supreme Court.

Be it remembered That heretofore towit: On the 20th day of August, 1912, the same being the 74th Judicial day of the May Term 1912, of said Supreme Court, the Vandalia Railroad Company by its attorneys, Samuel O. Pickens & Owen Pickens, filed in the office of the Clerk of said Supreme Court of said State of Indiana, a transcript of the record and proceedings had in the Marion Superior Court of said state of Indiana, in a cause wherein the Vandalia Railroad Company was appellant, and the Railroad Commission of Indiana was appellee, together with an assignment of errors by appellant and its appeal bond, which said transcript was filed as a term time appeal, and are in the words and figures following, towit:

1 Be it remembered, that among the records of the Superior Court of Marion County, Indiana, are the following in the cause of

No. 80171.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Placita.

Be it furthered remembered, That heretofore towit: On the 4th day of February, 1910, the above named plaintiff, by counsel, filed in the office of the Clerk of said Court, a complaint against the said defendant, which complaint is as follows:

2 STATE OF INDIANA,
County of Marion, ss:

In the Marion Superior Court.

No. 80171, Room 3.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Complaint.

First Paragraph.

Vandalia Railroad Company, plaintiff, complains of Railroad Commission of Indiana, and for first paragraph of its complaint says:

That the plaintiff ever since the first day of January, 1905, has been a consolidated railroad corporation organized and incorporated under and pursuant to the laws of the States of Indiana and Illinois; that the defendant is a commission created and existing under and by virtue of the laws of the State of Indiana; that ever since its incorporation the plaintiff has owned and operated and now owns and operates a line of railroad extending from the city of Indianapolis through the county of Marion and other counties in said state, and through the State of Illinois to the city of East St. Louis, in the State of Illinois, also a line of railroad extending from the city of Indianapolis Southwestwardly to the city of Vincennes, in the State of Indiana, also a line of railroad extending from the city of Terre Haute to the city of South Bend, in
3 said State, also a line of railroad extending from the city of Logansport to the town of Butler, in said state, and also operates under lease a line of railroad between the city of Terre Haute, Indiana, and the city of Peoria, Illinois, all of said lines aggregating more than eight hundered (800) miles of single main track railroad, and many miles of which consist of two and three parallel tracks, with many switches, turnouts, sidings and yards, and appliances and appurtenances therewith connected; that plaintiff owns and operates in the movement of trains over its said railroad more than two hundred (200) locomotives engines, all of which are equipped with practicable and efficient headlights for all purposes; that for the most part said trains and locomotive engines are used in the transportation of passengers and property over some part of said railroad between points in Indiana and points in other states, and all of said engines are used in the transportation of trains in the state of Indiana.

That on or about the 1st day of May, 1909, the defendant, without any petition or complaint therefor, but solely upon its own initiative and motion, assuming to act under and pursuant to authority to do so by virtue of the act of the general assembly of the state of Indiana, entitled: "An Act giving the Railroad Commission of Indiana specific powers to investigate and determine as to
4 the efficiency of headlights now in use on the locomotive engines on the railroads in Indiana and to prescribe efficient and practicable headlights now in use on locomotive engines on the railroads in Indiana, (sic) and to prescribe efficient and practicable headlights and make and enforce orders with reference thereto, and declaring an emergency," approved March 6, 1909, being chapter 128 of the acts of the sixty-sixth session of said General Assembly, instituted an inquiry and entered the same upon its docket by the title of, "In the matter inquiry as to the condition and efficiency of locomotive headlights in the State of Indiana; No. 322," and issued a notice to plaintiff and all other steam railroad companies operating in the State of Indiana, that it had set the said inquiry for hearing and conference on 20th day of May, 1909, at which time said companies and their representatives, and all persons interested might appear and advise the Commission in that behalf.

That on the sixth day of January, 1910, defendant, still having said inquiry under consideration and pretending to have thoroughly investigated and considered the question as to the efficiency of headlights in use on locomotive engines on the railroads in Indiana and to have determined that the headlights now in use are inadequate, and that the headlights prescribed by the order hereinafter set forth would be the most practicable and efficient headlights for all purposes, made and entered upon its records in said entitled cause a final order, and issued the plaintiff a copy thereof in the words and figures following, towit:

STATE OF INDIANA:

Railroad Commission of Indiana.

No. 322.

In the Matter of Inquiry as to the Condition and Efficiency of Locomotive Headlights in the State of Indiana.

Order of Railroad Commission.

The General Assembly in its acts of 1909 Chapter 128, page 323, having directed this commission to investigate the condition and efficiency of the locomotive headlights in use in the State of Indiana, and the commission having instituted an inquiry and investigation as required by said Act and having given due notice, by its circular letter No. 39, to all the railroad companies using locomotive headlights, that hearing and conference in this behalf would take place the morning of Thursday, the 20th day of May, 1909, and on said day the said railroad companies namely:

Baltimore & Ohio Railroad Company,
Baltimore and Ohio Southwestern Railroad Company,
Chicago, Cincinnati & Louisville Railroad Company,
Chicago, Indianapolis & Louisville Railway Company,
Chicago, Lakeshore & Eastern Railroad Company,
Chicago Terminal Transfer Railroad Company,
Cincinnati, Hamilton & Dayton Railroad Company,
Cleveland, Cincinnati, Chicago & St. Louis Railway Company,
Chicago & Erie Railroad Company,
Evansville & Terre Haute Railway Company,
Elgin, Joliet & Eastern Railway Company,
Grand Rapids & Indiana Railway Company,
Illinois Central Railroad Company,
Indianapolis Southern Railroad Company,
Indianapolis Union Railway Company,
Lake Erie & Western Railroad Company,
Lake Shore & Michigan Southern Railway Company,
Louisville & Nashville Railroad Company,
Louisville, Henderson & St. Louis Railway Company,
Michigan Central Railroad Company,

New York, Chicago & St. Louis Railroad Company,
Peoria & Eastern Railroad Company,
Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company,
Southern Railway Company,
Southern Indiana Railway Company,
Toledo, St. Louis & N. Western Railroad Company,
Vandalia Railroad Company,
and other railroad companies,

7 having appeared by their counsel, receivers, managers, superintendents and master mechanics and having co-operated and assisted the Commission in this investigation, and the Commission having examined a great many managers, superintendents, master mechanics, locomotive engineers, and trainmen, from time to time, and having corresponded with the authorities of the states of the union where this master has been considered and having consulted railroad men within the and without the state and having taken scientific and expert advice, and especially the counsel of the dean of the schools of engineering and professors in said schools of Purdue University (a series of physical experiments and tests having been conducted under the direction of said dean) and the Commission having made personal investigation by its members on the railroads and on locomotives using both oil and electric headlights and being fully advised and after full and laborious consideration, the Commission finds:

That the oil headlights commonly in use on locomotives engines in this state are inadequate for the protection of persons and property and that headlights of greater illuminating power would be the most practicable and efficient for all purposes.

It is therefore ordered, that in the place of said headlights every railroad corporation or receiver or lessee thereof operating any line of railroad in this state shall equip all locomotive engines

8 used in the *the* transportation of trains over the said railroads with headlights of not less than fifteen hundered (1500) candle power; provided this order shall not apply to locomotives regularly used in the switching of cars or trains.

It is further ordered, that all of said railroad companies shall equip one-third of their said road engines with said headlights by the 1st day of July, 1910, and additional one-third of their said engines by the 1st day of January, 1911, and the remaining one-third by the 1st day of July, 1911.

It is further ordered, that said railroad companies shall report to the Commission on the 1st day of July, 1910, on the 1st day of January, 1911, and on the 1st day of July, 1911, how many of their engines they have so equipped with headlights as required by this order, giving the whole number of engines in use by them, and a description of the headlight installed by them, and numbers of the engines upon which such headlights have been placed.

It is further ordered, that the secretary shall mail a certified copy by registered letter of this order to each of said railroad companies.

STATE OF INDIANA, *ss:*

I, J. L. Reiley, Secretary of the Railroad Commission of Indiana, hereby certify that the above and foregoing is a full, true and
9 correct copy of an order made in the foregoing entitled cause, this sixth day of January, 1910, as the same has been taken and copied from the record thereof now in my possesesion.

In Testimony Whereof, I hereunto set my name and affix *my* seal of said Commission *of* Indianapolis, Indiana, this 6th day of January, 1910.

(Signed) J. L. REILEY, *Secretary.*

That said order has never been modified or set aside; that no complaint has been filed in any court by the defendant to have the validity of said order determined; or to enforce the same against the plaintiff, but that the defendant, under and by virtue of the authority claimed to be given it by the provisions of said act of March 6, 1909, will attempt to enforce said order and require the plaintiff to equip all of its said locomotive engines used in the transportation of trains over its said railroad in Indiana with the kind of headlights prescribed by said order; that the defendant claims that the failure of the plaintiff to equip its said locomotive engines with said headlights will *will* subject the plaintiff to a penalty for each violation of said order of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000); that the defendant will, if the plaintiff fails to comply with said order within the time thereby given, institute suits against the plaintiff for said penalties and to
10 compel the plaintiff to comply with said order which will require the plaintiff to defend a multiplicity of suits and to incur great cost and expense in defending against said suits.

That the equipment of plaintiff's said locomotive engines with the headlights prescribed by said order will cost the plaintiff more than one hundred dollars ($100.00) per engine.

And plaintiff further avers that the said act of March 6, 1909, is unconstitutional and void in this:

First. That said act violates section twenty-five (25) of article one (1) of the constitution of the State of Indiana, which provides that "no law shall be passed the taking effect of which shall be made to depend upon any authority except as provided in this constitution."

Second. That it violates section eight (8) of article (1) of the constitution of the United States and the statutes of the United States enacted thereunder and in pursuance thereof, in that said act attempts to confer upon said defendant power and authority to prescribe how and in what manner plaintiff's locomotive engines engaged in interstate commerce shall be regulated and equipped, when the Congress of the United States, under and by virtue of said section eight (8) of article one (1) of the constitution of the United States has taken jurisdiction of and exercised its plenary power as to how and in what manner such locomotive engines shall be regu-
11 lated and equipped, by prescribing the kind of coupler, power-brake, ash pan, brake connections and handholds with which such locomotives shall be equipped.

Third. That said act purports to authorize the Railroad Commission of Indiana to make and enforce orders against the plaintiff without notice to the plaintiff and a hearing, and thereby deprive plaintiff of its property without due process of law and deny to the plaintiff the equal protection of the laws, in violation of section one (1) of article fourteen (14) in amendment of the constitution of the United States, and section (12) of article one (1) of the Constitution of the State of Indiana.

Fourth. That said act is special class legislation in that it effects steam railroad companies only, interurban railroads not being subjected to the burdens that may be caused by its enforcement, and it is therefore repugnant to section twenty-three (23) of article one (1) and section twenty-three (23) of article four (4) of the constitution of the State of Indiana, and to section one (1) of the fourteenth (14th) amendment to the constitution of the United States.

Fifth. That the said act is in effect a delegation of legislative powers in violation of section one (1) of article four (4) of the constitution of the State of Indiana, and therefore void.

12 Wherefore, the plaintiff prays the court to decree that said order is void and of no effect, and to set aside said order and enjoin the defendant from enforcing or attempting to enforce the same, and from collecting or attempting to collect from the plaintiff penalties for its failure to comply with said order, and *and* for all other proper relief.

Second Paragraph.

Vandalia Railroad Company, plaintiff, complains of the Railroad Commission of Indiana, and for second paragraph of its complaint says:

That the plaintiff ever since the first day of January, 1905, has been a consolidated railroad corporation organized and incorporated under and pursuant to the laws of the State of Indiana and Illinois; that the defendant is a commission created and existing under and by virtue of the laws of Indiana; that ever since its incorporation the plaintiff has owned and operated and now owns and operates a line of railroad extending from the city of Indianapolis through the county of Marion and other counties in said State, and through the State of Illinois to the city of East St. Louis in the state of Illinois, also a line of railroad extending from the city of Indianapolis southwestwardly to the city of Vincennes in the state —

13 Indiana, also a line of railroad extending from the city of Terre Haute to the city of South Bend in said state, also a line of railroad extending from the city of Logansport to the town of Butler, in said state, and also operated under lease a line of railroad between the city of Terre Haute, Indiana and the city of Peoria, Illinois, all of said lines aggregating more than eight hundered (800) miles of single main track railroad and many miles of which consist of two and three parallel tracks, with many switches, turnouts, sidings, and yards, and appliances and appurtenances connected therewith; that plaintiff owns and operates in the

movement of trains over the said railroad more than two hundered (200) locomotive engines, all of which are equipped with practicable and efficient headlights for all purposes; that for the most part *of* said trains and locomotives engines are used in the transportation of passengers and property over some parts of said railroad, between points in Indiana and points in other states, and all of said locomotive engines are used in the transportation of trains in the state of Indiana.

That on or about the 1st day of May 1909, the defendant, without any petition or complaint therefor but solely upon its own initiative and motion, assuming to act under and in pursuance of authority to do so by virtue of the act of the General Assembly of the State of Indiana, entitled "An act giving the Railroad Commission of Indiana specific powers to investigate and determine as to the efficiency of headlights now in use on locomotive engines on the
14 railroads in Indiana and to prescribe efficient and practicable headlights now in use on locomotive engines on the railroads in Indiana, (sic) and to prescribe efficient and practicable headlights and make and enforce orders with reference thereto, and declaring an emergency," approval March 6, 1909, being chapter 128 of the acts of the sixty-sixth session of said General Assembly, instituted an inquiry and entered the same upon its docket by the title of "In the matter of inquiry as to the condition and efficiency of locomotive headlights in the state of Indiana; No. 322," and issued a notice to plaintiff and all other steam railroad companies operating in the State of Indiana, that it has set the said inquiry for hearing and conference on the 20th day of May, 1909, at which time said companies and their representatives and all persons interested might appear and advise the Commission in that behalf.

That on the 6th day of January, 1910, defendant still having said inquiry under consideration and pretending to have thoroughly investigated and considered the question as to the efficiency of headlights in use on locomotive engines on the railroads in Indiana and to have determined that the headlights now in use are inadequate and that the headlights prescribed by the order hereinafter set forth would be the most practicable and efficient headlights
15 for all purposes made and entered upon its records in said entitled cause a final order, and issued to the plaintiff a copy thereof, in the words and figures following, towit:

STATE OF INDIANA:

Railroad Commission of Indiana.

No. 322.

In the Matter — Inquiry as to the Condition and Efficiency of Locomotive Headlights in the State of Indiana.

Order of Railroad Commission.

The General Assembly in its acts of 1909, Chapter 128, page 323, having directed this commission to investigate the condition and efficiency of the locomotive headlights in use in the State of Indiana, and the Commission having instituted an inquiry and investigation as required by said Act and having given due notice, by its circular letter No. 39, to all the railroad companies using locomotive headlights, that hearing and conference in this behalf would take place the morning of Thursday, the 20th day of May, 1909, and on said day the said railroad companies namely:

Baltimore and Ohio Railroad Company,
Baltimore and Ohio Southwestern Railroad Company,
Chicago, Cincinnati & Louisville Railroad Company,
Chicago, Indianapolis & Louisville Railway Company,
Chicago, Lake Shore & Eastern Railroad Company,
16 Chicago Terminal Transfer Railroad Company,
Cincinnati, Hamilton & Dayton Railway Company,
Cleveland, Cincinnati, Chicago & St. Louis Railway Company,
Chicago & Erie Railroad Company,
Evansville & Terre Haute Railway Company,
Elgin, Joliet & Eastern Railway Company,
Grand Rapids & Indiana Railway Company,
Illinois Central Railroad Company,
Indianapolis Southern Railroad Company,
Indianapolis Union Railway Company,
Lake Erie & Western Railroad Company,
Lake Shore & Michigan Southern Railway Company,
Louisville & Nashville Railroad Company,
Louisville, Henderson & St. Louis Railway Company,
Michigan Central Railroad Company,
New York, Chicago & St. Louis Railroad Company,
Peoria & Eastern Railroad Company,
Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company,
Southern Railway Company,
Southern Indiana Railway Company,
Toledo, St. Louis & Western Railroad Company,
Vandalia Railroad Company,

and other railroad companies having appeared by their
17 counsel, receivers, managers, superintendents and master mechanics and having co-operated and assisted the Commis-

sion in this investigation, and the Commission having examined a great many managers, superintendents, master mechanics, locomotive engineers and trainmen, from time to time, and having corresponded with the authorities of the States of the union where this matter has been considered and having consulted railroad men within and without the State and having taken scientific and expert advice, and especially the counsel of the dean of the schools of Engineering and professors in said schools of Purdue University (a series of physical experiments and tests having been conducted under the direction of said dean) and the Commission having made personal investigation by its members on the railroads and on locomotives using both oil and electric headlights and being fully advised and after full laborious consideration, and the Commission finds:

That the oil headlights commonly in use on locomotive engines in this state are in-equate for the protection of persons and property and that headlights of greater illuminating power would be the most practicable and efficient for all purposes.

It is therefore ordered, that in the place of said headlights every railroad corporation or receiver or lessee thereof operating any line of railroad in this state shall equip all locomotive engines
18 used in the transportation of trains over the said railroad with headlights of not less than fifteen hundred (1,500) candle power: provided this order shall not apply to locomotives regularly used in the switching of cars or trains.

It is further ordered, that all of said railroad companies shall equip one-third of their said road engines with said headlights by the first day of July, 1910, an additional one-third of their said engines by the first day of January, 1911, and the remaining one-third by the 1st day of July, 1911.

It is further ordered, that said railroad companies shall report to the Commission on the 1st day of July 1910, on the 1st day of January, 1911, and on the first day of July, 1911, how many of their engines they have so equipped with headlights as required by this order, giving the whole number of engines in use by them, and a description of the headlight installed by them, and numbers of the engines upon which such headlights have been placed.

It is further ordered, that the secretary shall mail a certified copy by registered letter of this order to each of said railroad companies.

STATE OF INDIANA, *ss:*

I, J. L. Reiley, Secretary of the Railroad Commission of Indiana, hereby certify that the above and foregoing is a full, true
19 and correct copy of an order made in the foregoing entitled cause, this sixth day of January, 1910, as the same has been taken and copied thereof now in my possession.

In testimony whereof, I hereunto set my name and affix my seal of said Commission *of* Indianapolis Indiana, this 6th day of January, 1910.

(Signed) J. L. REILEY, *Secretary.*

That said order has never been modified or set aside: that no complaint has been filed in any court by the defendant to have the validity of said order determined, or to enforce the same against the plaintiff, but, that the defendant under and by virtue of the authority claimed to be given it by the provisions of said act will attempt to enforce said order and require the plaintiff to equip all of its said locomotive engines used in the transportation of trains over its said railroad in Indiana with the kind of headlights prescribed by said order: that the defendant claims that the failure of the plaintiff to equip its said locomotive engines with said headlights so prescribed will subject the plaintiff to a penalty for each violation of said order of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00); that the defendant will if the plaintiff fails to comply with said order within the time thereby given, institute suits against the plaintiff for said
20 penalties, and to compel the plaintiff to comply with the said order, which will require the plaintiff to defend a multiplicity of suits and will cause the plaintiff to incur great cost and expense in defend*ant* against said suits; that the equipment of plaintiff's said locomotive engines with the headlights prescribed by said order will cost the plaintiff more than one hundred dollars ($100.00) per engine.

And plaintiff further avers that the said order is a mistake and abuse of power upon the part of the defendant, and therefore unreasonable and void, in this:

First. That the headlights prescribed by said orders are not and would not be efficient and practicable headlights for all purposes, and are not as practicable and efficient for all purposes as the headlights now in use on plaintiff's said locomotive engines.

Second. That the use of the headlights prescribed by said order on plaintiff's locomotive engines used in the transportation of its said trains will make the movement of said trains and engines unsafe and dangerous to plaintiff's passengers, employes and property.

Third. That in order to comply with said order the plaintiff would be required to equip its locomotive engines with electric or acetylene gas headlights, at heavy cost for both installation and maintenance and for which there is no necessity whatever for the protection of persons and property.

21 Fourth. That in order to comply with said order plaintiff would be required to equip its locomotive engines which are engaged in interstate commerce with said headlights, when the Congress of the United States, under and in pursuance of section eight (8) of article one (1) of the constitution of the United States, has, by the enactment of statutes, prescribed the manner in which all locomotive engines engaged in interstate commerce shall be equipped, and the plaintiff has complied with and is complying with said statutes.

Fifth. That the power attempted to be conferred on the defendant by said act of March 6, 1909, to require locomotive engines on the railroads in Indiana, to be equipped with such headlights as

may be prescribed by the defendant is not expressed in the title of said act, as required by section nineteen (19) of article four (4) of the constitution of the State of Indiana, and the said order of the defendant was therefore made in the absence of any law conferring upon the defendant the power to make it, and is therefore void.

Wherefore, plaintiff prays the court to decree the said order void and of no effect, and to set aside said order, and enjoin the defendant from enforcing or attempting to enforce the same, or collecting or attempting to collect from the plaintiff penalties for its failure to comply with said order, and for all other proper relief.

SAMUEL O. PICKENS,
Attorney for Plaintiff.

JNO. G. WILLIAMS,
Of Counsel.

22 And afterwards towit: On the 10th day of February, 1910, being the fourth juridical day of the February Term, 1910, of said court before the Hon. Vinson Carter, Judge thereof the following proceedings were had herein, viz:

"Come Smith, Duncan, Hornbrook & Smith, and file their written appear-s as attorneys for defendant as of return day, as folows:

STATE OF INDIANA,
Marion County, ss:

Superior Court.

No. —.

THE VANDALIA RAILROAD COMPANY
vs.
INDIANA RAILROAD COMMISSION et al.

Def't's Appearance.

We hereby enter our appearance as of the return day of summons for the defendant in the above entitled cause.

SMITH, DUNCAN, HORNBROOK & SMITH,
Attorneys for Indiana Railroad Commission.

23 And after towit: On the 9th day of March, 1912, being the 6th juridical — of the March Term, 1912, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

"Comes plaintiff by counsel and files motion to amend first paragraph of complaint by inserting certain allegations as follows:

STATE OF INDIANA,
County of Marion, ss:

Superior Court of Marion County.

No. 80171. Room 3.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Motion by Plaintiff for Leave to Amend the First Paragraph of Its Complaint.

The plaintiff moves the court for leave to amend the first paragraph of its complaint by inserting immediately preceding the prayer of said paragraph of the complaint the following words, towit:

First Amendment to First Paragraph of Complaint.

"Plaintiff further avers that after the entering of said order by the defendant, and before the expiration of thirty days from the date of the entry of said order a committee representing and in behalf of the plaintiff and the other railroad companies named in said order appeared before the defendant and represented to the defendant that the plaintiff and said other railroad companies regarded said
24 order as unfair and unjust to the plaintiff and said other railroad companies, and that they would file and present to the defendant petitions to the defendant to grant a hearing in the case in which said order was made and entered, and to alter, change, or modify said order, if the defendant would entertain such petition, to which representation the defendant answered that it was not worth while to file such petitions as the defendant had thoroughly considered the case, and that the Commission would not alter, change, or modify said order."

PICKENS & PICKENS,
Attorneys for Plaintiff.

Leave to Amend.

And the court grants said motion. Also plaintiff files motion to amend second paragraph of complaint by inserting certain words and allegations as follows:

STATE OF INDIANA,
County of Marion, ss:

Superior Court of Marion County.

No. 80171. Room 3.

VANDALIA RAILROAD
vs.
RAILROAD COMMISSION OF INDIANA.

Motion by Plaintiff for Leave to Amend the Second Paragraph of Its Complaint.

The plaintiff moves the court for leave to amend the second paragraph of its complaint by inserting immediately following the fifth clause of said paragraph the following words:

25 First Amendment to Second Paragraph of Complaint.

1. "Plaintiff further avers that said order of said defendant is so vague, indefinite, and uncertain in its description of the headlight which it purports to require as to be entirely meaningless and void, because said order wholly fails to specify at what distance from the source of the light the illuminating power of the same is to be measured, or at what angle from a horizontal or vertical plane, if either, passing through said light the same is to be measured; or whether the required candle power of the same is to be determined by averaging the intensity of said light at any given distance from the source thereof, and, if so, at what distance; or whether the intensity of illuminating power of said light is to be measured at any given point within the "spread" thereof or the arc covered by the rays of said light, and, if so, at what point; that the said order does not specify the character of the reflector, if any, nor the diameter nor the depth of said required headlight; nor whether said required candle power may be developed by reflectors or lenses, or both, or whether such light must be fifteen hundered candle power independent of such lenses or reflectors.

That each of the foregoing elements is an essential factor in the ascertainment and measurement of the illuminating capacity of headlights and in the intelligible description thereof, and that there is no known standard by which such illuminating capacity may be
26 measured and expressed in terms of candle power in the absence of such factors.

That it is and will be impossible for this plaintiff or for any tribunal, to determine whether or not the installation and use of a given headlight is in compliance with the true intent of said order, provided the same should at some point develop fifteen hundered candle illuminating capacity; and that a headlight may be so designed, constructed and operated as to develop an illuminating capacity of fifteen hundered candle power or more at a certain distance from

the source of light and at a certain point within the arc or "spread" of its rays, and yet be entirely useless and impracticable for any purpose whatever, and that the illuminating capacity of any headlight, expessed in candle power terms, depends solely upon the point at which it is measured and to what extent the same is diffused or "spread".

And the plaintiff moves the court for leave further to amend its second paragraph of complaint by inserting immediately preceding the prayer of said paragraph the following words:

2. "Plaintiff further avers that after the entering of said order by the defendant, and before the expiration of thirty days from the date of the entry of said order a committee representing and in behalf of the plaintiff and the other railroad companies named in said order appeared before the defendant and represented to the defend-
27 ant that the plaintiff and said other railroad companies regarded said order as unfair and unjust to the plaintiff and said other railroad companies, and that they would file and present to the defendant to grant a hearing in the case in which said order was made and entered, and to alter, change, or modify said order, if the defendant would entertain such petitions, to which representation the defendant answered that it was not worth while to file such petitions, as the defendant had thoroughly considered the case, and that the Commission would not alter, change or modify said order."

PICKENS & PICKENS,
Attorneys for Plaintiff.

March 8th, 1912. S. O. P.

And the court grants said motion. And the defendant is ruled to answer complaint as amended."

Leave to Amend.

And afterwards towit: On the 23rd day of March, 1912, being the 18th juridical day of the March term, 1912, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

"Comes the defendant by counsel and files answer to amended complaint: (Complaint hereinafter amended.) Also the defendants file interrogatories as follows:

28 STATE OF INDIANA,
Marion County, ss:

Superior Court, Room No. 3.

No. 80171.

THE VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

The defendant moves the court to require the plaintiff to make answer under oath to each of the interrogatories subjoined and attached to this motion.

SMITH, DUNCAN, HORNBROOK AND SMITH,
Attorneys for Defendant.

1. When did the committee appear before the Railroad Commission of Indiana, and make the representations to it set forth in the amendment to the first and second paragraphs of the complaint?
Ans. ——.
2. Where did said committee thus appear before said Railroad Commission?
Ans. ——.
3. Was said Railroad Commission of Indiana in session at the time?
Ans. ——.
4. What members of said Commission were present at the time of said committee making such appearance?
Ans. ——.
5. Was any written notice or petition filed with said Commission by said committee at the time of such alleged appearance for
29 the Railroad Commission or at any time thereaftere?
Ans. ——.
6. Was there any oral motion made by said committee at the time of such alleged appearance before the Commission for a hearing upon the matter of the order requiring the installation of headlights of not less than 1,500 candle power, set forth in the complaint as amended in this cause, or to alter, change or modify such order?
Ans. ——.
7. Was the Secretary of the Railroad Commission of Indiana in attendance or present at the time of the appearance of said committee before the Railroad Commission of Indiana?
Ans. ——.
8. Was there ever any entry or order made by the Railroad Commission of Indiana, refusing to grant a rehearing in the matter of the order requiring the installation of headlights on locomotives, set forth in the complaint as amended, or refusing to alter, change or modify such order?
Ans. ——.
And the plaintiff is ruled to answer the interrogatories by March 30, 1912".

30 And afterwards towit: On the 3rd day of April, 1912, being the 3rd juridical day of the April Term, 1912, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Motion for Leave to Amend First Par. of Complaint Second Time.

"Comes plaintiff by counsel and files motion to amend first paragraph of complaint by striking out certain allegations and inserting in place thereof certain other allegations, as follows:

31 STATE OF INDIANA,
County of Marion, ss:

In the Superior Court of Marion County.

No. 80171. Room 3.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Motion by Plaintiff for Leave to Further Amend the First Paragraph of Its Complaint.

The plaintiff moves the court for leave to amend the first paragraph of its complaint by striking out of said paragraph the following words, which by leave of court were inserted immediately preceeding the prayer of said paragraph of complaint on the 9th day of March, 1912, towit:

Second Amendment to First Par. of Complaint.

"Plaintiff further avers that after the entering of said order by the defendant, and before the expiration of thirty days from the date of the entry od said order, a committee representing and in behalf of the plaintiff and the other railroad companies named in said order, appeared before the defendant and represented to the defendant that the plaintiff and said other railroad companies regarded said order as unfair and unjust to the plaintiff and said other railroad companies, and that they would file and present to the defendant petitions to the defendant to grant a rehearing in the case in which said order was made and entered, and to
32 alter, change or modify said order if the defendant would entertain such petitions, to which representation the defendant answered that it was not worth while to file such petitions, as the defendant had thoroughly considered the case, and that the commission would not alter, change or modify said order, and to insert in lieu thereof the following words:—

"Plaintiff further avers that after the entering of said order by the defendant and before the expiration of thirty days from the

date of the entry of said order, towit:—on January 19, 1910, H. F. Houghton, General Superintendent of the C. C. C. & St. L. Ry. Co., as chairman of a committee which had theretofore been appointed to represent the plaintiff and the other railroad companies named in said order to consider the matter of presenting a petition to the defendant for and on behalf of the plaintiff and said other railroad companies for a rehearing of the case in which said order was entered, and for the modification and change of said order of acting for said committee and in behalf of the plaintiff and said other railroad companies delivered a written communication to Hon. William J. Wood, Chairman of the defendant, pointing out certain objections of said railroad companies to said order, and which communication concluded as follows:—

'And as chairman of the committee of Indiana railroads appointed to present to the Commission the objections of the
33 railroads to high-power headlights, I desire to make formal application for a suspension, of the order of the Commission, and for a further hearing on the subject.'

That on January 24, 1910, the said H. F. Houghton, as chairman of said committee, received from the said Hon. William J. Wood, a communication in writing, in which it was stated that the said William J. Wood had submitted said Houghton's communication of January 19, 1910, to the Commission; that the Commission would not suspend the order it had theretofore made in the headlight case, but would treat said Houghton's communication as an application for a modification of the order, and would hear said Houghton and such other persons as he might desire to appear before the Commission for a reasonable length of time on Wednesday, the 2nd day of February, at ten o'clock A. M. and stated:—

'The Commission feels that having engaged in this investigation from May 1, 1909, to the present time, and having made personal tests, and having had tests made by the professors of Purdue University, we do not care to have further tests made, but will be glad to hear you on the tests that have already been made and on any new matter you may have, or any reasonable objection you desire to make to the order we have made in this case. I will expect you as chairman of the committee, to advise the carriers interested of the hearing Wednesday.'

34 That on Wednesday, the 2nd day of February, 1910, in pursuance of the suggestion of said William J. Wood in his communication of January 24, 1910, the said committee representing the plaintiff and said other railroad companies appeared before the defendant, the Commission then being in session, and stated to the Commission that the plaintiff and said other railroad companies regarded said order as unfair and unjust to the plaintiff and said other railroad companies, and that the same ought to be set aside or modified, but that the said railroad companies had nothing further to offer upon the matter: that they felt that they had made their case justifying the setting aside of said order, and that thereupon the Commission, by its chairman, stated that the Commission had

thoroughly considered the case, and that the order, as entered, would stand as a final order of the Commission."

SAMUEL O. PICKENS.
OWEN PICKENS,
Attorneys for Plaintiff.

Leave to Amend.

And the court being fully advised grants said motion. And by leave of court the plaintiff files amendment to first paragraph of complaint as in said above motion.

The plaintiff also files its motion to amend second paragraph of complaint by striking out certain allegations and inserting in place thereof certain other allegations as follows:

35 STATE OF INDIANA,
County of Marion, ss:

In the Superior Court of Marion County.

No. 80171. Room 3.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Motion by Plaintiff for Leave to Further Amend the Second Paragraph of Its Complaint.

The plaintiff moves the court for leave to amend the second paragraph of its complaint by striking out the following words, which were by leave of court inserted in said complaint on the 9th day of March, 1912, immediately preceding the prayer of said paragraph of complaint, to-wit:—

Second Amendment to Second Par. of Complaint.

"Plaintiff further avers that after the entering of said order by the defendant, and before the expiration of thirty days from the entry of said order, a committee representing and in behalf of the plaintiff and the other railroad companies named in said order appeared before the defendant and represented to the defendant that the plaintiff and said other railroad companies regarded said order as unfair and unjust to the plaintiff and said other railroad companies, and that they would file and present to the defendant petitions to the defendant to grant a hearing in the case in which said order was made and entered and to alter, change or modify
36 said order if the defendant would entertain such petitions, to which representation the defendant answered that it was not worth while to file such petitions as the plaintiff had thoroughly con-

sidered the case, and that the Commission would not alter, change or modify said order."

and to insert in lieu thereof the following words:

"Plaintiff further avers that after the entering of said order by the defendant and before the expiration of thirty days from the date of the entry of said order, to-wit: on January 19, 1910, H. F. Houghton, General Superintendent of the C. C. C. & St. L. Ry. Co., as chairman of a committee which had theretofore been appointed to represent the plaintiff and the other railroad companies named in said order to consider the matter of presenting a petition to the defendant for and on behalf of the plaintiff and said other railroad companies for a hearing of the case in which said order was entered, and for the modification and change of said order, acting for said committee and in behalf of the plaintiff and said other railroad companies delivered a written communication to Hon. William J. Wood, Chairman of the defendant, pointing out certain objections of said railroad companies to said order, and which communication concluded as follows:

And as chairman of the committee of Indiana railroads appointed to present to the Commission *the Commission* the objections of the railroads to high-power headlights, I desire to make formal
37 application for a suspension of the order of the Commission, and for a further hearing on the subject.

That on January 24, 1910, the said H. F. Houghton as chairman of said committee, received from the said Hon. William J. Wood, a communication in writing, and which *was* stated that the said William J. Wood had submitted said Houghton's communication of January 19, 1910, to the Commission; that the Commission would not suspend the order it had theretofore made in the headlight case, but would treat said Houghton's communication as an application for a modification of the order, and would hear said Houghton and such other persons as he might desire to appear before the Commission for a reasonable length of time on Wednesday, the 2nd day of February, at 10 o'clock A. M. and stated:

The Commission feels that, having engaged in this investigation from May 1, 1909, to the present time and havi*hg* made personal tests, and having had tests made by the professors of Purdue University, we do not care to have further tests made, but will be glad to hear you on the tests that have already been, and on any new matter you may have, or any reasonable objection you desire to make to the order we have made in this case. I will expect you as chairman of the committee to advise the carriers interested of the hearing Wednesday.

That on Wednesday, the second day of February, 1910, in
38 the pursuance of the suggestion of the said William J. Wood, in his communication of January 24, 1910, the said committee representing the plaintiff and said other railroad companies appeared before the defendant, the Commission then being in session, and stated to the Commission that the plaintiff and said other railroad companies regarded said order as unfair and unjust to the plaintiff and said other railroad companies, and that the same ought to be

set aside or modified, but the said railroad companies had nothing further to offer upon the matter; that they felt that they had made their case justifying the setting aside of said order, and that thereupon the Commission, by its chairman, stated that the Commission had thoroughly considered the case, and that the order as entered, would stand as a final order of the Commission."

SAMUEL O. PICKENS,
OWEN PICKENS,
Attorneys for Plaintiff.

Leave to Amend.

And the court sustains said motion and the plaintiff files amendment to second paragraph of complaint as in said above motion.

39 And afterwards to-wit: On the 10th day of April, 1912, being the 9th judicial — of the April Term, 1912, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

"Comes defendant by counsel and files demurrer to first paragraph of second amended complaint as follows:

STATE OF INDIANA,
County of Marion, ss:

Superior Court, Room 3.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Dem. to First Par. of Second Amended Complaint.

The defendant demurs to the 1st paragraph of the second amended complaint, and for cause of demurrer says that said paragraph of the second amended complaint does not state facts sufficient to constitute a cause of action against this defendant.

SMITH, DUNCAN, HORNBROOK & SMITH,
Att'ys for Defendant.

Memorandum Stating Wherein Such Pleading is Insufficient for Want of Facts.

1st. That the facts pleaded do not show that the act of the General Assembly was in conflict with either the Constitution of the
40 State of Indiana or the Constitution of the United States.

2nd. As to so much of said first paragraph of the second amended complaint as seeks to set forth an excuse for failing to ask for a rehearing before the Railroad Commission or for a modification of its order, the Railroad Commission can only speak by its record.

And there is no averment of the record of any order made by the Railroad Commission overruling any application for a rehearing or for a modification of the order made.

Also file answer to second paragraph of second amended complaint as follows:

41 STATE OF INDIANA,
Marion County, ss:

Superior Court, Room 3.

No. 80171.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Answer to Second Amended Complaint.

The defendant for its answer to the first paragraph and second paragraph of the second*ed* amended complaint says, that on the 19th day of January, 1910, H. F. Houghton, General Superintendent of the C. C. C. & St. L. Ry. Co. as Chairman of a Committee which had theretofore been appointed to represent the plaintiff and the other railroad companies named in said order, did write a letter addressed to Wm. J. Wood, Chairman Railroad Commission of Indiana, containing the sentences set forth in said paragraph of the amended complaint, of which letter the following is a copy:

"January 19, 1910.

Mr. Wm. J. Wood, Chairman, Railroad Commission of Indiana, Indianapolis, Indiana.

DEAR MR. WOOD: I have yours of the 13th which was in reply to mine of the 12th relative to the Commission's order in the headlight matter.

I feel sure that on reflection you will recall that in the conference between yourself, Mr. Crawford and the writer at the time we were arranging for the tests, it was agreed that the result of the
42 Purdue tests as would be reported by Dr. Benjamin of the Purdue Engineering Schools would be open for discussion between us, that is, between the Commission and the Representatives of the railroads, and any others who chose to take part in it, and we have been waiting to hear from the Commission that the Purdue report had been received.

The very great objection which the railroads have to powerful headlights and the pains that we took to present our objections, I thought would make it clear to the Commission that we certainly would desire to be heard, if, after doing so the Commission still thought it desirable to order the high power lights. The decision of the Commission apparently was not reached until after Mr. Dowl-

ing left it and as Mr. Payne, the new member, has no opportunity to see any of the tests, and could not in a few days between his taking office and the rendering of the decision have given the question any adequate study, I feel that we should be given an opportunity to make further tests to demonstrate to him and the other members of the Commission the very objectionable points in the high power headlights.

The order of the Commission calling for a 1500 candle power light, makes it necessary to use the electric arc light, as no other light that has yet been produced is strong enough, and as chairman of the committee of Indiana Railroads appointed to present to the Commission the objections of the railroads to high power headlights,
43 I desire to make formal application for a suspension of the order of the Commission, and have a further hearing on the subject.

Yours truly,

H. F. HOUGHTON."

And that thereafter on the 24th day of January 1910 the said William J. Wood, as Chairman of the defendant the Railroad Commission of Indiana, wrote and delivered to said H. F. Houghton a letter, of which the following is a copy:

"January 24th, 1910.

322.

Mr. H. F. Houghton, General Superintendent, C. C. C. & St. L. Ry. Co., Indianapolis.

DEAR SIR: I submitted your letter of January 19th with reference to the Commission's order in the headlight case to the Commission.

Under the General Commission Act and under our practice we have the authority to alter, change or modify any final order made by the Commission. The Commission will not suspend the order it has heretofore made in the headlight case, but will treat your letter as an application for a modification of the final order, and as I have stated to you on the telephone, will hear you and Mr. Crawford and such other persons as you may desire to appear
44 before us, for a reasonable length of time on next Wednesday, the 2nd day of February at 10.00 A. M.

I do not recall the agreement you say made between you and Mr. Crawford and myself with reference to another hearing after the Purdue report came in, but the Commission desires in every case to proceed carefully and give the carriers interested full opportunity to say anything that would have bearing on the subject, and hence we give you the opportunity, as stated, next Wednesday.

You are mistaken also in thinking that Mr. Dowling the retiring member, did not take part in the consideration and to some extent in the final decision of this case. His views with reference to this matter was subjected to writing and will be made part of the record. I may add also, that so far as Mr. Payne is concerned, his experience as a locomotive engineer enabled him rapidly to consider the points

involved in this case. He is just as defi[illegible] his views about it as are the other two members of the Commi[illegible]on.

You are further greatly mistaken in the proposition that our order excludes acetylene gas. On this point we have the very best testimony that it does not exclude such headlights.

I note also that you speak of further tests. The Commission feels that having engaged in this investigation from May 1st, 1909, to the present time, and having made personal tests and having had tests made by the Professors at Purdue University, we do not
45 care to have further tests made, but we will be glad to hear you on the tests that have already been made and on any new matter you may have or any reasonable objection you desire to make to the order we have made in this case.

I am sending you by your messenger two copies of the Purdue report. One is complete and is intended for Mr. Crawford's file. The other is as complete as we can make it, and has, indeed, everything except the blueprints, which you will find in the copy for Mr. Crawford.

I will expect you as Chairman of the Committee to advise the carriers' interests of the hearing Wednesday.

Yours very truly,

—— ——, *Chairman.*

The defendant further avers that on said 24th day of January, 1910, this defendant did enter its order touching the application made in said letter of H. F. Houghton in the words and figures following:

"STATE OF INDIANA:

Railroad Commission of Indiana.

No. 322.

IN THE MATTER OF INQUIRY AS TO THE CONDITION AND EFFICIENCY OF LOCOMOTIVE HEADLIGHTS IN THE STATE OF INDIANA.

In the entitled above case, application having been made by H. F. Houghton, Gen. Sup't of the C. C. C. & St. L. R. R. Co.,
46 for himself and the other carriers interested for modification of the final order made in this case;

It is ordered that on Wednesday the 2nd day of Feb. 1910 at 10 A. M. respondents will be heard on their application to change or modify the original order.

(Read and approved Jan. 24, 1910.)

The defendant further avers that on said 2nd day of February, 1910, this defendant convened in session for the purpose of hearing said H. F. Houghton and any other of the railroad companies affected by said order upon such application, and thereupon on said date the following proceedings were had, as shown and as set forth

in the records of the proceedings had before and of the orders made by this defendant.

"STATE OF INDIANA:

Railroad Commission of Indiana.

No. 322.

IN THE MATTER OF INQUIRY AS TO THE CONDITION OF LOCOMOTIVE HEADLIGHTS IN USE IN THE STATE OF INDIANA.

In the entitled case the application for modification coming on to be heard, the carriers appeared by H. F. Houghton, Chairman of the Committee, and S. O. Pickens, and Frank Littleton, counsel, and represented to the Commission that in view of the time
47 and attention already given to this matter by the commission the application for modification of the order was withdrawn, and therefore after consideration:

It is ordered, That the matter of the application for modification of the final order of the Commission in this proceeding be and the same is hereby dismissed.

W. J. WOOD, *Chairman.*

(Read and approved Feb. 2, 1910.)"

Wherefore this defendant says that this court has no power or jurisdiction to further proceed as to the matters and facts averred in the second amended complaint in this cause, and the defendant prays to be hence discharged with its costs.

SMITH, DUNCAN, HORNBROOK & SMITH,
Attorneys for Defendant.

48 And the plaintiff is ruled to reply by April 13, 1912."

And afterwards, towit: On the 17th day of April, 1912, being the fifteenth juridical day of the April Term, 1912, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Dem. to 2nd Par. of Answer to Amended Complaint.

"Comes plaintiff, by counsel, and files demurrer to the second paragraph of answer to the amended complaint, as follows:

(Answer hereinafter amended.)

And afterwards towit: On the 8th day of June, 1912, being the 6th juridical day of the June Term, 1912, of said court, before the

same Hon. Judge thereof the following proceedings were had herein, viz:

Dem. to 1st Par. of 2d Amended Complaint Overruled.

"Come the parties by counsel and the court being fully advised overrules defendant's demurrer to first paragraph of second amended complaint to which ruling of the court the defendant at the time excepts. And the defendant is ruled to answer over.

49 And afterwards towit: On the 12th day of June, 1912, being 9th juridical day of the June Term, 1912, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:

Motion for Leave to Amend Answer.

"Comes now the defendant and files its motion in writing for leave to amend its answer heretofore filed in this case, addressed to the second parapraph of the second amended complaint, by inserting in the first line thereof immediately before the word "second" therein, the words "first paragraph and" so as to make the introduction to such answer read—"The defendant for answer to the first paragraph and to the second paragraph of second amended complaint says" etc., and for leave of the court to file such amended paragraph of answer as an answer to both the first and second paragraphs of second amended complaint, which motion is in the words and figures, following:

STATE OF INDIANA,
Marion County, ss:

Superior Court.

Room No. 3.

No. 80171.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

The defendant moves the court for leave to amend the answer heretofore filed in this cause addressed to the second paragraph of the second amended complaint, by inserting in the first line
50 thereof immediately before the word "second" therein, the words, "first paragraph and", so as to make the introduction to such answer *to* read "The defendant for its answer to the first paragraph and to second paragraph of the second amended complaint says" etc., and for leave of the court to file such amended paragraph

of answer as an answer to both the first and second paragraphs of the second amended complaint.

SMITH, DUNCAN, HORNBROOK & SMITH,

Attorneys for Defendant.

Leave to Amend Answer. Amended Answer Filed.

And the Court, now being sufficiently advised in the premises sustains said motion, and said words are now inserted in said answer as originally filed, and the defendant now files said answer as amended as an answer to the first as well as to the second paragraph of the second amended complaint, and the plaintiff is now ruled to reply thereto.

Dem. to Amended Answer to 1st Par. of 2nd Amended Complaint.

Now the plaintiff files its demurrer to the amended answer to the first paragraph and second paragraph of the second amended complaint which demurrer is in the words and figures following, to wit:

51 STATE OF INDIANA,
County of Marion, ss:

Superior Court of Marion County.

No. 80171.

Room 3.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Demurrer to Amended Answer to 1st Par. of Amended Complaint and to 2nd Par. of Amended Complaint.

The plaintiff demurs to the amended answer to the first paragraph and the second paragraph of the second amended complaint herein, and for grounds of demurrer says:

1. That the facts stated in said answer are not sufficient to constitute a cause of defense to said first paragraph of complaint.
2. That the facts stated in said answer are not sufficient to constitute a cause of defense to the said second paragraph of complaint.
3. That the facts stated in said answer are not sufficient to abate the action.
4. That the facts stated in said answer are not sufficient to constitute an answer or plea in abatement of the action.

PICKENS & PICKENS,
Attorneys for Plaintiff.

Demurrer to Answer Overruled and Exception.

And the court being duly advised, overrules said demurrer, to which ruling the plaintiff at the time excepts, and the plain-
52 tiff now elects to stand upon its said demurrer to said amended answer, and refuses to plead further.

Judgment.

It is therefore considered, and adjudged by the court:
That the plaintiff take nothing by its suit herein, and that the *plaintiff* recover of the plaintiff its costs herein laid out and expended, taxed at $—.

Appeal.

And now the plaintiff prays an appeal to the Supreme court which is granted upon the filing of its bond in the sum of five hundered dollars ($500.00) with the American Surety Co-pany of New York as surety within thirty days from this date, which surety is now approved.

And afterwards to wit: On the 22nd day of June, 1912, being the 18th juridical day of the June Term, 1912, of said court, before the same Hon. Judge thereof, the following proceedings were had herein, viz:
"Come the parties by counsel, and the plaintiff now files an appeal bond with American Surety Company of New York, as surety, which bond is — follows:

53 *Appeal Bond.*

Know all men by these presents, That the Vandalia Railroad Company, as Principal and the American Surety Company of New York, as Surety are held and firmly bound unto the Railroad Commission of Indiana in the penal sum of Five Hundred ($500.00) dollars, to the payment of which, well and truly to be made and done we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 14th day of June, 1912.
The condition of the above obligation is such, that whereas, heretofore, to wit: On the 12th day of June, 1912, the said Railroad Commission of Indiana in the Marion Superior Court, recovered a Judgment against the said Vandalia Railroad Company — costs of suit, from which said Judgment of said Marion Superior Court, the said Vandalia Railroad Company appeal- to the Supreme Court of Indiana.
Now if the said Vandalia Railroad Company shall well and truly prosecute said appeal, and abide by and pay the Judgment

and costs, which may be rendered or affirmed against it, then the above obligation to be null and void: otherwise to be and remain in full force and virtue in law.

VANDALIA RAILROAD COMPANY,
By JOSEPH WOOD, *President.*
54 AMERICAN SURETY COMPANY OF NEW YORK,
By E. V. CLARK,
Resident Vice-President.

Attest:
L. B. LIGGETT, *Secretary.*

Attest:
JOHN J. REINHARD,
Resident Asst. Secretary.

Approved June 22, 1912.
[SEAL.] VINSON CARTER, *Judge.*

Approval of Appeal Bond.

And said bond is approved by the court."

Filed: Aug. 20, 1912. J. Fred France, Clerk.

55 STATE OF INDIANA,
County of Marion, ss:

Superior Court, Room 3.

No. 80171.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Præcipe.

The Clerk will please make and certify a transcript for appeal to Supreme Court of the following: Original Complaint; amend-ents to complaint; amended answer to seconded amended complaint; demurrer to amended answer to second amended complaint; appeal bond, all order book entries.

PICKENS & PICKENS,
Attorneys for Plaintiff.

56 STATE OF INDIANA,
County of Marion, ss:

No. 80171.

VANDALIA RAILROAD COMPANY
vs.
RAILROAD COMMISSION OF INDIANA.

Clerk's Certificate.

I, John Rauch, Clerk of the Superior Court, Marion County, Indiana, do hereby certify that the above and foregoing transcript contains full, true and correct copies of all the papers filed and entries of proceedings had in the above entitled cause, as appears from the files and records in my office, and as requested by the above and foregoing præcipe.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at my office, in the city of Indianapolis, this 10th day of August, 1912.

[SEAL.]

JOHN RAUCH,
Clerk Marion Superior Court.

Filed August 20th, 1912. J. Fred France, Clerk.

57 STATE OF INDIANA:

In the Supreme Court.

VANDALIA RAILROAD COMPANY, Appellant,
vs.
RAILROAD COMMISSION OF INDIANA, Appellee.

Assignment of Errors.

Appellant, Vandalia Railroad Company says there is manifest error in the judgment and proceedings of the Court below in this cause, in this:

1. The Court, erred in overruling appellant's demurrer to the amended answer to the first paragraph of the second amended complaint.

2. The Court erred in overruling appellant's demurrer to the amended answer to the second paragraph of the second amended complaint.

Wherefore, appellant prays that the judgment of the Court below be in all things reversed.

SAMUEL O. PICKENS,
OWEN PICKENS,
Attorneys for Appellant.

Filed Aug. 20th, 1912. J. Fred France, Clerk.

58 And afterwards to-wit: On the 19th day of September, 1912, being the 101st juridical day of the May Term, 1912, of said Supreme Court the following further pleas and proceedings were had in said cause, to-wit:

"Come now the parties by their counsel, and this cause is submitted to the court for judgment and decree as provided by an act of the General Assembly of the State of Indiana, approved April 13th, 1885, and the rules of said Supreme Court adopted in relation thereto.

And afterwards to-wit: On the 14th day of November, 1912, being the 148th juridical day of the May Term, 1912, of said Supreme Court, the following pleas and proceedings were had in said cause to-wit:

"Comes now the appellant by counsel and files a petition for an extention of time in which to file brief, and on the same day, the court being fully advised, said petition was granted and brief to be filed on or before January 1st, 1913.

59 And afterwards to-wit: On the 31st day of December, 1912, the same being the 132nd juridical day of the November Term, 1912, of said Supreme Court the following further pleas and proceedings were had in said cause:

"Comes now the appellant by counsel and files its brief (8) in the words and figures following:

And afterwards to-wit: On the 21st day of January, 1913, the same being the 50th judicial — of the November —, 1912, of said Supreme Court the following further pleas and proceedings were had in said cause.

"Comes now the appellee by Counsel and files its brief (8) and its request for oral argument in the words and figures following:

And afterwards to-wit: On the 27th day of January, 1913, the same being the 55th judicial day of November term of said Supreme Court the following further pleas and proceedings were had in said cause:

"Comes now the appellee by Counsel and files its petition to advance said cause with proof of service of notice for January 13, 1913, in the words and figures following:

60 And afterwards to-wit: On the 11th day of February, 1913, the same being the 68th judicial — of the November Term, 1912, of said supreme court the following further pleas and proceedings were had in said cause:

"Come now the parties by counsel, and the court being fully advised in the premises, orders that said cause be advanced and submitted for decision.

And afterwards to-wit: On the 15th day of February, 1913, the same being the 72nd judicial day of the November Term 1912, of

said Supreme Court, the following further pleas and proceedings were had in said cause:

"Come now the parties and the court being fully advised in the premises now sets said cause for oral argument for February 20th, 1913, and notices thereof are duly issued.

And afterwards to-wit: On the 19th day of February, 1913, the same being the 75th judicial day of the November Term, 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

"Comes now the appellant by counsel and files additional authorities (8) in the words and figures following:

61 And afterwards to-wit: On the 21st day of February, 1913, the same being the 77th judicial day of the November Term, 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

"Comes now the appellant by counsel and files a motion, with proof of service of notice, for leave to correct briefs:

And afterwards to-wit: On the 7th day of March, 1913, the same being the 89th judicial day of the November Term 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

The Court being fully advised in the premises grants appellant's motion to correct brief herein.

And afterwards: On the 13th day of March, 1913, the same being the 94th judicial day of the November Term 1912, of said Supreme Court, the following further pleas and preceedings were had herein:

62 Copy.

THE STATE OF INDIANA:

In the Supreme Court, November Term, 1912.

On the 13th day of March, 1913, being the 94th Judicial day of said November Term, 1912.

Hon. Quincy A. Myers, Chief Justice; Hon. John W. Spencer, Hon. Douglas Morris, Hon. Charles E. Cox, Hon. Richard K. Erwin, Associate Justices.

No. 22272.

In the Case of
VANDALIA RAILROAD COMPANY
vs.
THE RAILROAD COMMISSION OF INDIANA.

Appealed from the Marion Superior Court.

(#80171.)

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

ERWIN, *J.*:

63 This was an action on the part of the appellant against the appellee, commenced in the Marion Superior Court, February 4th, 1910, to set aside and to enjoin the enforcement and the collection of penalties for failure to comply with an order of the Railroad Commission of Indiana, made in pursuance of the act of the General Assembly of the state of Indiana, approved March 6th, 1909, requiring appellant and other railroad companies operating lines of railroad in Indiana to equip all their locomotive engines, except engines used in switching with headlights of not less than 1500 candle-power, and naming a day that such appliances should be installed.

The complaint was in two paragraphs, and alleging among other averments of the complaint, that the act of the General Assembly, which authorizes the Railroad Commission to make and enforce the order to install and maintain a headlight on locomotives of railroad trains, running over lines in the state of Indiana contravenes the constitution of the United States and the state of Indiana, and is therefore void.

The defendant (appellee) the Railroad Commission, answered this complaint in one paragraph in which they recite the correspondence between the Railroad Commission and appellant in relation to the order of which appellant complained.

The demurrer to the amended answer to the first and second paragraph- of amended complaint was, by the court, overruled, and appellant refusing to plead further, judgment was rendered against the plaintiff (appellant) that they take nothing by their suit, and that the defendant recover of the plaintiff its costs, from which finding and judgment the plaintiff appealed to this court.

The assignment of errors presents the following questions:

1st. The overruling of appellant's demurrer to the amended answer to the first paragraph of the second amended complaint.

2nd. The overruling of appellant's demurrer to the amended answer to the second paragraph of the second amended complaint.

Appellant contends 1st., That the act of March 6th, 1909, authorizes the Indiana Railroad Commission to investigate and determine

as to the efficiency of headlights now in use on locomotive engines, on the railroads of Indiana, and to prescribe efficient and practical headlights, and to make and enforce orders with reference thereto is void, because it violates the commerce clause of the federal constitution, in that it purports to give the Railroad Commission power over a subject-regulation of the equipment of instruments
64 used by interstate railroads in conducting interstate commerce and contends that it is solely within the power of Congress, by the commerce clause of the Constitution of the United States and that, if the subject is not within the exclusive power of Congress, but is one concerning which the state may legislate in the absence of legislation by Congress, nevertheless the act is void, because it is superseded and rendered inoperative by the acts of Congress covering the subject.

2nd. That the act in question is void for the reason that it purports to authorize the Railroad Commission, without, notice and opportunity to be heard, to make and enforce orders against appellant, compliance with which would entail upon appellant great costs, and thereby deprive appellant of its property without due process of law, and deny to it the equal protection of the law, in violation of article 14 in the amendment- of the Constitution of the United States, and in violation of the Constitution of the state of Indiana.

3rd. That the act is void because it delegates legislative power to the Railroad Commission in violation of section 1 of article 4 of the state constitution, and

4th. That makes its operation to depend upon the will of the Railroad Commission, and is in conflict with article 25, Section 1 of the Constitution.

The Constitution of the United States confers power on Congress, "To regulate commerce with foreign nations and among the several states and with the Indian tribes."

Article 1, Section 8, Constitution of United States.

Under this provision Congress derives its power to regulate interstate commerce.

All powers not delegated to the federal government by the Constitution are reserved to the states, and the states have full power over commerce which does not assume the character of interstate commerce, and may pass such laws regulating commerce within the states as they may deem expedient or politic. Luken v. Lake Shore, etc., R. Co. 140 Am. St. Repts. p. 225; People v. Chicago etc., R. Co. 223 Ill. 581; People v. Erie R. Co. 198 N. Y. 369; Detroit etc. R. Co. v. State, 82 Ohio St. 60; Missouri Pac. R. Co. v. Kansas, 216 U. S. 262; Missouri etc. R. Co. v. Haber, 169 U. S. 613; Reid v. Colorado, 187 U. S. 137; 2 Elliott on Railroads, 690; 4 Elliott on Railroads 1671.

The adjudications on this subject by the Supreme Court of the United States with respect to the power of the state over the
65 general subject of commerce are divisible into three clauses, viz:

1st. Those in which the power of the state is exclusive.

2nd. Those in which the state may act in the absence of legislation by Congress.

3rd. Those in which the action of Congress is exclusive and the state can not interfer- at all. Western Union Tel. Co. v. James, 162 U. S. 650.

We are of the opinion that this act of the Legislature holds good under the second clause, supra, because:

The Railroad Commission is the agent to carry out the wishes of the Legislature; and the Legislature in passing the act of March 6th, 1909, intended the Railroad Commission should investigate the use of headlights, and if found necessary to order, and enforce the order, that better and safer headlights be put into use, not only to protect the lives of travelers upon one train, but protect the lives and property of travelers on any other train, running over the same road, and as there is no legislation by Congress regulating headlights this act is authorized until an act of Congress displaces or suspends its operation.

The supreme court of the United States in numerous decisions has said that a statute enacted by the state, by virtue of its police power, is not inconsistent with an act of Congress, unless the conflict is so direct and positive that the two acts can not stand together. Savage v. Jones 225 U. S. 501, and cases cited.

The last case involved the constitutionality of an act of the General Assembly of the state of Indiana, Act 1907, Chapter 206.

This same tribunal has declared that where there has been no direct legislation upon the precise subject matter, that it is to be regarded as equivalent to a declaration by Congress that, until it sees proper to legislate thereon, the matter may be regulated by the state. County of Mobile v. Kimball, 102 U. S. 691-98; Pittsburgh etc. R. Co. v. State, 172 Ind. 147, 165; Pittsburgh etc. R. Co. v. Indiana, 223 U. S. 713; Chicago etc. R. Co. v. Arkansas, 219 U. S. 453, 461; Chicago etc. R. Co. v. State, 86 Ark. 412; Mandott v. New York etc. R. Co. 223 U. S. 1, 54, 55; Missouri etc. R. Co. v. Larbee etc. Co. 211 U. S. 612, 623; The decisions of our state are all to the same effect. Southern R. Co. v. Railroad Comm. Jan. 3, 1913, — Ind. —, 100 N. E. p. 337; Pittsburgh etc. R. Co. v. Hartford City, 170 Ind. 674, 679; State of Indiana v. L. & N. R. Co. 96 N. E. 340, and cases cited.

There being no legislation by Congress relating to headlights on locomotives, this statute is within the power of the state to
66 enact.

In the case of Atlantic Coast Line Railroad v. State of Georgia, 135 Ga. 454; 32 L. R. A. p. 20, the court holds an act of the Georgia Legislature, which provides that railroad companies are required to equip and maintain headlights on locomotives used by such companies on their main lines after dark, which shall consume not less than 300 watts at the arc, with a reflector of not less than 23 inches in diameter and to keep it in good condition and providing a penalty for its violation, does not violate the due process clauses of the state and federal constitution, because its enforcement will

require a loss of property to the defendant in doing away with the headlight now in use, and cause the defendant to incur expense in equipping its locomotives with headlights required by this act.

"The act was passed in the legitimate exercise of the police power of the state, and is not void on the ground that its requirements are unreasonable."

"Statutes regulating other closely related subjects have been under discussion however, and seem to establish as fundamental propositions that state legislation does not necessarily regulate interstate commerce because incidentally or remotely affecting it; or in other words, state legislation is not deemed a regulation, strictly speaking, simply because it may to some extent, or under some circumstances, affect such commerce; that the state may, in the reasonable exercise of its police power, impose burdens upon interstate commerce, which occasion both inconvenience and hardship to the railroads, providing Congress has not directly regulated the same subject; but that when Congress has acted with reference to a particular subject, its statutes displace, or at least, suspend all state regulation touching the matter; and finally, that laws not so unreasonable as to be declared arbitrary, passed under the police power of the state, which regulate the equipment of railroad rolling stock with reference to the safety of employees and passengers, are not regulations of interstate commerce, in the objectional sense of the constitution. Atlantic Coast Line R. Co. *v.* State, 135 Ga. 545; 32 L. R. A. 20: See other cases to the same effect: C. M. &. St. P. R. Co. v. Solan, 169 U. S. 133; A. & R. Co. v. R. A. Patterson Tob. Co. 169 U. S. 311; M. K. & T. R. Co. v. Haber, 169 U. S. 613; L. S. & M. S. R. Co. v. Ohio, 173 U. S. 285; C. C. & St. L. R. Co. v. Illinois, 177 U. S. 514; Ch'go, R. I. & P. Co. v. Arkansas 219 U. S. 453.

The appellant presents the further question by its brief, that the act in question delegates legislative powers to the Railroad
67 Commission in violation of section 1, Art. 4 of the state constitution, and makes the taking effect of the law to depend on the order of the Railroad Commission in violation of Section 25, Article 1, of the state Constitution and is therefore void.

The decisions of this court and the courts of other states, in this regard are clearly against appellant's contention. McPherson v. State, 174 Ind. 60, and cases cited on page 73; Isenhour v. State, 157 Ind. 517; Pittsburg C. C. & St. L. R. Co. v. State, 172 Ind. 147; Detroit T. & I. R. Co. v. State, 82 Ohio St. 60; Wabash R. Co. v. Railroad Commission, 95 N. E. 673.

It is the contention that the title of the act in question is not sufficient, that it does not contain the subject of the act.

The title of the act in question reads as follows:

"An act giving the Railroad Commission of Indiana specific powers to investigate and determine as to the efficiency of headlights now in use on locomotive engines on the railroads in Indiana, and to prescribe efficient and practical headlights now in use on locomotive engines on the railroad in Indiana (sic) and to prescribe efficient and practical headlights and to make and enforce order with re-

ference thereto and declaring an emergency." The section of the act in question reads as follows:

"Be it enacted by the general assembly of the state of Indiana, that in addition to the powers heretofore granted to the railroad commission of Indiana that said commission be, and it is hereby specifically empowered, authorized and directed, as soon as practical after the passage of this act, to investigate the condition and efficiency of headlights now in use on locomotive engines on the railroads in this state, and if found to be inadequate for the protection of persons and property, or any other purpose, to investigate and determine what would be the most practicable and efficient headlight for all purposes, and when the commission shall have so determined, to make and enforce against the railroad companies such order or orders as may be found to be necessary to require the equipment and installation of such headlights on the locomotives on the railroad- in this state, and to this end said commission is given power in such investigation to examine the various kinds of lights that may be suitable for locomotive headlights, and appliances thereto, to consult experts in such matters as to require the attendance of witnesses and the production of papers, documents, and appliances." An
68 emergency if declared.

It is not essential to a good title that the subject of the act shall be express- in exact terms; it is sufficient if the subject is fairly deducible from the language employed. The proper test in all questions of this sort is—does the body of the particular legislation embrace more than one general subject, and such matters as are calculated to assist in reaching the single object intended, and is that subject disclosed by the title? If thus tested, it appeared that an act embraces but one subject and matters properly connected therewith; and that that subject is shown by the title, it must be held constitutional; otherwise not. Isenhour v. State, 157 Ind. 517-24; Gustavel v. State, 153 Ind. 613; Central Union Tel. Co. v. Fehring, 146 Ind. 189; State v. Gerhardt, 145 Ind. 439-458; 33 L. R. A. 313; Henderson v. State, ex rel. 137 Ind. 552, 558 24 L. R. A. 469; Booth v. State, 100 N. E. 563, — Ind. —.

Does the act violate sec. 25, art. 1; providing that no law shall be passed the taking effect of which shall be made to depend upon any authority except as provided in the constitution?

The decisions of this state are decisive of the question adverse to appellant's contention. Isenhour v. State, 157 Ind. 517-523 and cases cited; Booth v. State, — Ind. — 100 N. E. —, 563.

The title is sufficient to cover the purview of the act and is not in conflict with section 19, article 4 of the constitution of the State, the title relates to headlights on engines and the act itself relates only to this one subject.

It is contended by the appellants that the order made is in conflict with the 14th., amendment of the Constitution of the United States and that it is without due process of law. The act in question is supplemental to the Railroad Commission act of 1905 in which provision is made for the method to be pursued by railroad companies dissatisfied with an order of the commission, and by

which the orders of the railroad commission are enforced—"by appropriate actions at law or suits in equity instituted and prosecuted in some court, of competent jurisdiction"—and gives appellant its day in court. §5533, 5536, 5541, 5548, 5550 Burn's 1908; New York etc. R. Co. v. New York, 165 U. S. 628, 633, 634.

The order of the commission was made after notice to the company and hearing had, covering several months, and it could not be said to be made "without due process of Law," as required by the 14th., amendment to the Constitution of the United States.

The fact that the appellant would be compelled to make changes in their locomotive headlights, and necessarily be to some
69 expense in doing so, would not render the act, nor the order made in pursuant thereof, illegal and void, for the reason that under the police power of the state, which has to do with the health, comfort, safety, happiness and welfare of its citizens, all property is subservient to the state. P. C. C. & St. L. v. Brown, 67 Ind. 45; State v. Richcreek, 167 Ind. 217; State v. Barrett, 172 Ind. 169; Inland Steel Co. v. Yedinak, 172 Ind. 423; Barrett v. State, 175 Ind. 112; Booth v. State, (No. 22224) 100 N. E. 563, — Ind. —.

The Railroad Commission law of this state was intended by the Legislature to vest in this commission the power to act for the Legislature in all matters covered by said act, and is a salutary measure for the proper operation of the railroads of the state, and the "Headlight" act of March 6th., 1909, being chapter 128, page 323, of the acts of the general assembly of 1909, is in further aid to this commission, each of which were intended, and were enacted on the supposition that the railroads operating in the state were willing to, and would, use all proper and available means in their power, to secure the safety of the public in general and their employees in particular.

This law was so *defeated* that if any order should be made by the commission that was indefinite, or uncertain in its terms, that upon the proper application, the same could be changed, modified or altered to meet the enquiry submitted by the complaining company. Sec. 5537 Burn's 1908, Acts 1907, page 454, Sec. 7; Chicago etc. R. Co. v. Railroad Commission, 175 Ind. 630.

It is evident that the order is not open to the defect of being "uncertain" and "indefinite" as claimed by appellant for they aver in their petition "that the equipment of plaintiff's said locomotive engine with the headlight prescribed by said order will cost the plaintiffs more than one hundred ($100) dollars per engine." This allegation it seems to us indicates that appellant was fully advised as to what was required of it At least it is — no position to complain until it has made an honest effort to comply with the order, with the best information at hand. Chicago etc. R. Co. v. City of Crawfordsville, 164 Ind. 70-74, 72 N. E. 1025; Booth v. State, decided by this court Jan. 28, 1910, 100 N. E. 563.

"Candle-power" has a usual and ordinary meaning and could be ascertained upon due inquiry.

We are of the opinion that the complaint in this cause does

not show a state of facts, which would entitle the appellant
70 to the relief sought, and hence the rule is applicable that a bad answer is good enough for a bad complaint. State v. Meyers, 100 Ind. 487; Ice v. Ball, 102 Ind. 42; Alkire v. Alkire, 134 Ind. 530; Grace v. Cox, 16 App. 150; Alexander v. Spaulding, 160 Ind. 176; Tyler v. State, 83 Ind. 563; State v. Porter 89 Ind. 260; Mitchell v. City of Peru, 163 Ind. 17.

There being no error in the record.

Judgment affirmed.

71 It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed at the cost of the appellant all of which is ordered to be certified to said Court,

And it is further considered by the Court, that the appellee recover of the appellant the sum of — for its costs and charges in this behalf expended.

THE STATE OF INDIANA,
Supreme Court:

I, J. Fred France, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In witness whereof, I -ereto set my hand and affix the seal of said Court, at the City of Indianapolis, this — day of ——, 191—.

——— ———,
C. S. C.

[Endorsed:] In the Supreme Court, — Term, 191—, —— ——, vs. —— ——, Certified copy of opinion. J. Fred France, Clerk Supreme Court.

72 And afterwards to-wit: On the 8th day of May, 1913, the same being the 142nd judicial day of the November Term, 1912, of said Supreme Court the following further pleas and proceedings were had herein:

"Comes now the Appellant by counsel and files its petition and brief (8) for a rehearing herein, which petition is in the words and figures following:

73 In the Supreme Court of Indiana.

No. 22272.

VANDALIA RAILROAD COMPANY, Appellant,
v.
RAILROAD COMMISSION OF INDIANA, Appellee.

Appeal from the Marion Superior Court.

Petition for Rehearing.

The appellant respectfully shows that the court erred in its opinion and decision in the above-entitled cause, as follows:

1. The court erred in holding that the complaint does not show a state of facts entitling appellant to the relief sought.
2. The court erred in holding the headlight law valid, notwithstanding the laws enacted by Congress under the commerce clause of the Constitution of the United States.
3. The court erred in holding that neither the headlight law, nor the order of the Commission made thereunder, is repugnant to the Fourteenth Amendment to the Constitution of the United States.
4. The court erred in holding that the headlight law does not delegate legislative powers to the Railroad Commission, and
74 is not in violation of Section one (1), Article four (4) of the Constitution of Indiana.

Wherefore, appellant respectfully prays the court to grant a rehearing in the above-entitled cause.

VANDALIA RAILROAD COMPANY,
By PICKENS & PICKENS,
JAS. G. WILLIAMS,
Its Attorneys.

[Endorsed:] No. 22272. In the Supreme Court of Indiana. Vandalia Railroad Company, Appellant, v. Railroad Commission of Indiana, Appellee. Appeal from the Marion Superior Court. Copy of petition for rehearing by Vandalia Railroad Company. Filed May 8, 1813. J. Fred France, Clerk.

75 And afterwards to-wit: On the 11th day of November, 1914, being the 147th judicial day of the May Term, 1914, of said Supreme Court, the following further pleas and proceedings were had herein:

"Come now the parties and the Court being sufficiently advised in the premises denies the petition for rehearing heretofore filed herein by appellants and orders judgment for the appellee herein.

76 And afterwards, to-wit: On the 4th day of March, 1915, being the 88th judicial day of the November Term, 1914, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the appellant, by counsel, and files in the office of the Clerk of the Supreme Court, its petition for the allowance of a writ of error, said petition and the allowance thereof being hereto next below attached, and being as follows:

77 STATE OF INDIANA:

In the Supreme Court.

No. 22272.

VANDALIA RAILROAD COMPANY, Appellant,
vs.
THE RAILROAD COMMISSION OF INDIANA, Appellee.

Petition for Writ of Error.

To the Honorable Chief Justice of the Supreme Court of Indiana:

Appellant, Vandalia Railroad Company, prays for a writ of error from the Supreme Court of the United States to the Supreme Court of Indiana to review the judgment of said Supreme Court of Indiana in the above entitled cause, and for cause thereof alleges:

That by the opinion and judgment of the Supreme Court of Indiana affirming the judgment of the Superior Court of Marion County, Indiana in this cause, there is drawn in question the validity of a statute of and authority exercised under a statute of the State of Indiana, on the ground of their being repugnant to the constitution of the United States, and the decision of said Supreme Court of Indiana is in favor of their validity, which is more fully shown by appellant's assignment of errors filed herewith.

VANDALIA RAILROAD COMPANY,
Appellant.

SAMUEL O. PICKENS,
OWEN PICKENS, *Its Counsel.*

[Endorsed:] Original. State of Indiana. In the Supreme Court. No. 22272. Vandalia R. R. Co., Appellant, v. The Public Service Commission of Indiana, Appellee. Petition for Writ of Error. Pickens & Pickens, Attorneys for Appellant, 1300 Fletcher Trust Building, Indianapolis. Filed Mar. 4, 1915. J. Fred France,
78 Clerk.

And on the same day, the following further pleas and proceedings were had in said court, in said cause:

Comes now the appellant, by counsel, and files an assigment of errors in the Supreme Court of the United States, on the writ of error herein, said assignment of error being hereto next below attached, and being as follows:

79 STATE OF INDIANA:

In the Supreme Court.

No. 22272.

VANDALIA RAILROAD COMPANY, Plaintiff in Error,
vs.
THE PUBLIC SERVICE COMMISSION OF INDIANA, Defendant in Error.

Assignment of Errors.

Plaintiff in error, Vandalia Railroad Company, for its assignment of errors says:

1. That the Act of the General Assembly of the State of Indiana, approved March 6, 1909, entitled: "An Act giving the Railroad Commission of Indiana specific powers to investigate and determine as to the efficiency of headlights now in use on locomotive engines on the railroads in Indiana, and to prescribe efficient and practicable headlights now in use on locomotive engines on the railroads in Indiana, and to prescribe efficient and practicable headlights and make and enforce orders with reference thereto, and declaring an emergency," being Chapter 128 of the Acts of the Sixty-sixth Regular Session of said General Assembly, (Acts 1909, p. 323) is void as being repugnant to the commerce clause of the constitution of the United States and the laws enacted by Congress thereunder; and the Supreme Court of Indiana erred in holding and deciding that
80 said Act is valid and not repugnant to said clause of the constitution of the United States and the laws enacted by Congress thereunder.

2. That said Act of the General Assembly of Indiana is void as being repugnant to the fourteenth amendment to the constitution of the United States, and the Supreme Court of Indiana erred in holding and deciding that said Act is not repugnant to the fourteenth amendment.

3. That the final order of the Railroad Commission of Indiana requiring the plaintiff in error to equip all of its locomotive engines (except locomotives regularly used in the switching of cars or trains) used in the transportation of trains over its railroads with headlights of not less than fifteen hundred (1,500) candle power, made and entered on the 6th day of January, 1910, under and in pursuance of the provisions of said Act of the General Assembly of Indiana, is void as being repugnant to the commerce clause of the constitution of the United States and the laws enacted by Congress thereunder; and the Supreme Court of Indiana erred in holding and deciding that said order is not repugnant to the said clause of the constitution of the United States and the laws enacted by Congress thereunder.

4. That the said final order of the Railroad Commission of Indiana is void as being repugnant to the fourteenth amendment to the constitution of the United States; and the Supreme Court of the

State of Indiana erred in holding and deciding that said order is not repugnant to the fourteenth amendment.

81 5. That the said order of the Railroad Commission is void for uncertainty and indefiniteness; and the Supreme Court of Indiana erred in holding and deciding that said order is not void for uncertainty and indefiniteness.

SAMUEL O. PICKENS,
OWEN PICKENS,
Attorneys for Vandalia Railroad Company, Plaintiff in Error.

[Endorsed:] Original. State of Indiana. In the Supreme Court. No. 22272. Vandalia Railroad Co., Plaintiff in Error, v. The Railroad Commission of Indiana, Def't in Error. Assignment of Errors. Pickens & Pickens, Attorneys for Plaintiff in Error. 1300 Fletcher Trust Building, Indianapolis. Filed Mar. 4, 1915. J. Fred
82 France, Clerk.

And on the same day the following further pleas and proceedings were had in said court, in said cause:

Comes now the appellant, by counsel, and files its bond on writ of error from the Supreme Court of the United States in the penal sum of One Thousand Dollars (1,000.00) which bond is now taken and approved, by Honorable Richard K. Erwin, Chief Justice, a copy being hereto next below attached, and being as follows:

83 *Bond.*

Know all men by these presents, That we, Vandalia Railroad Company, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto The Public Service Commission of Indiana, as the successor of The Railroad Commission of Indiana, in the sum of One Thousand Dollars ($1,000.00), to be paid to the said Public Service Commission of Indiana or its successor, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of February, in the Year of Our Lord One Thousand Nine Hundred Fifteen.

Whereas, lately, to-wit: on March 13, 1913, at a term of the Supreme Court of Indiana, in a suit pending in said Court between said Vandalia Railroad Company as appellant and the said Railroad Commission of Indiana as appellee, a judgment was rendered against said appellant, affirming a judgment of the Superior Court of Marion County, Indiana in favor of said appellee and against said appellant that said appellant take nothing by its suit and that the said appellee recover of said appellant its costs laid out and expended in said suit, and the said appellant having obtained a writ of error and filed a copy thereof in the Clerk's Office of said Supreme Court of Indiana to reverse the judgment of said Supreme Court in said suit, and a citation directed to said Public Service Com-

mission of Indiana, citing and admonishing it to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from the date thereof;

Now, the condition of the above obligation is such that if the said Vandalia Railroad Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] VANDALIA RAILROAD COMPANY.

Attest:
S. H. CHURCH, *Assistant Secretary.*

[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
By E. V. CLARK, *Resident Vice-President.*

Attest:
JNO. J. REINHARD,
Resident Ass't Secretary.

Approved, the 4 day of March, 1915.
RICHARD K. ERWIN,
Chief Justice of the Supreme Court of Indiana.

[Endorsed:] Filed Mar. 4, 1915. J. Fred France, Clerk.

84 And on the same day the following further pleas proceedings were had in said court, in said cause:

Comes now the appellant, by counsel, and files a writ of error from the Supreme Court of the United States, to the said Supreme Court of Indiana, in this cause, said writ of error being hereto next below attached, and being as follows:

85 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Indiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court of Indiana before you or some of you, being the highest Court of law or equity of the said state in which a decision could be had in the said suit between Vandalia Railroad Company, Appellant, and The Railroad Commission of Indiana, Appellee, No. 22272 on the docket of said Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States,

and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, [illegible] commission; a manifest error hath happened to the great damage of the said Vandalia Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy
86 justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the said Supreme Court of the United States, the 4 day of March, in the Year of Our Lord One Thousand Nine Hundred and Fifteen.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk of the District Court of the United States for the District of Indiana.

Allowed by:
RICHARD K. ERWIN,
Chief Justice of the Supreme Court of Indiana.

[Endorsed:] Copy. State of Indiana. In the Supreme Court. No. 22272. Vandalia R. R. Co. appellant v. The Public Service Commission of Indiana, appellee. Writ of Error. Pickens & Pickens, attorneys for appellant, 1300 Fletcher Trust Building, Indianapolis. Filed Mar. 4, 1915. J. Fred France, Clerk.

87 And on the same day, the following further pleas and proceedings were had in said court, in said cause:

Comes now the appellant, by counsel, and files his citation on said writ of error, duly signed by Honorable Richard K. Erwin, Chief Justice of said Supreme Court, and proof of service of the citation on the defendant in error, said citation and proof of service thereof being hereto next below attached, and being as follows:

88 UNITED STATES OF AMERICA, *ss:*

To the Public Service Commission of Indiana, as the Successor of the Railroad Commission of Indiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the United States,

wherein Vandalia Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard K. Erwin, Chief Justice of the Supreme Court of Indiana, this 4 day of March, in the Year of Our Lord One Thousand Nine Hundred and Fifteen.

RICHARD K. ERWIN,
Chief Justice of the Supreme Court of Indiana.

89 STATE OF INDIANA,
County of Marion, ss:

On the 4 day of March, in the Year of Our Lord One Thousand Nine Hundred and Fifteen, personally appeared before me, the subscriber, Samuel O. Pickens, and makes oath that he delivered a true copy of the within citation to the Honorable Thomas Duncan, Chairman of The Public Service Commission of Indiana and to the Honorable Richard M. Milburn, Attorney General of the State of Indiana, on the 4 day of March, 1915.

SAMUEL O. PICKENS.

Subscribed and sworn to the 4 day of March, 1915.

Seal Notary Public, Indiana.

M. H. PEACOCK,
Notary Public.

My commission expires June 24, 1918.

[Endorsed:] Original. State of Indiana, In the Supreme Court. No. 22272. Vandalia R. R. Co., appellant, v. The Public Service Commission of Indiana, appellee. Citation. Pickens & Pickens, attorneys for appellant, 1300 Fletcher Trust Building, Indianapolis. Filed Mar. 4, 1915. J. Fred France, clerk.

90 STATE OF INDIANA:

In the Supreme Court.

No. 22272.

VANDALIA RAILROAD COMPANY, Appellant,
vs.
RAILROAD COMMISSION OF INDIANA, Appellee.

Præcipe for Transcript of Record.

Hon. J. Fred France, Clerk of the Supreme Court of Indiana:

In making return of the writ of error in the above entitled cause and the transcript of the record, please incorporate in such transcript only the following portions of the record:

1. All of the transcript on appeal from the Superior Court of Marion County, Indiana to the Supreme Court of Indiana.
2. The assignment of errors in the Supreme Court of Indiana, set forth on the transcript from said Superior Court of Marion County, Indiana.
3. All of the record of the proceedings in the Supreme Court of Indiana, except the briefs filed, including the opinion and decision of that Court.
4. Appellant's petition for a rehearing and the Court's ruling thereon.
5. The petition for writ of error, the assignment of errors, the writ of error, the supersedeas bond on the writ of error, the original citation and the proof of service thereof.

VANDALIA RAILROAD COMPANY,
Appellant,

By SAMUEL O. PICKENS,
OWEN PICKENS,
Its Counsel.

I, Thomas Duncan, as Chairman of the Public Service Commission of Indiana, hereby acknowledge service of the foregoing prœcipe by receiving a copy thereof, this 4th day of March, 1915.

THOMAS DUNCAN,
Chairman of the Public Service Commission of Indiana.

[Endorsed:] Original. State of Indiana, In the Supreme Court. No. 22272. Vandalia R. R. Co., appellant, v. Railroad Commission of Indiana, appellee. Prœcipe for Transcript of Record. Pickens & Pickens, attorneys for appellant, 1300 Fletcher Trust Building, Indianapolis. Filed Mar. 4, 1915. J. Fred France, clerk.

91 STATE OF INDIANA:

In the Supreme Court.

I, J. Fred France, Clerk of the Supreme Court of the state of Indiana, certify the above and foregoing to be a full, true and complete transcript of the record of the proceedings had, papers filed, motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the Supreme Court of Indiana in cause No. 22272 Vandalia Railroad Company vs. Railroad Commission of Indiana, also the original petition for the allowance of the writ of error, the original writ of error from the Supreme Court of the United States to the Supreme Court of Indiana, with the allowance thereof; the original citation to the defendant in error and proof of service thereof; a copy of the original bond and its approval by the chief justice of said Supreme Court of Indiana, and the assignment of errors in the Supreme Court of the United States. Which said transcript annexed hereto, together with said original petition for the allowance of the writ of error, the original order of allowance

of the writ of error, the original assignment of error, the original writ of error, a copy of the original bond and the original citation, I hereby certify as and for my full return to said writ of error:

In witness, whereof, I hereto set my hand and affix the seal of said Supreme Court, at the City of Indianapolis, this 9th day of March, 1915.

[Seal Supreme Court of Indiana, MDCCCXVI.]

J. FRED FRANCE,
Clerk of Supreme Court of Indiana.

Endorsed on cover: File No. 24,614. Indiana Supreme Court. Term No. 395. Vandalia Railroad Company, plaintiff in error, vs. The Public Service Commission of Indiana as the successor of the Railroad Commission of Indiana. Filed March 12th, 1915. File No. 24,614.

[redacted]

Supreme Court of the United States

[redacted]

[redacted] 81

[redacted]

VANDALIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

v.

THE PUBLIC SERVICE COMMISSION OF INDIANA, AS THE SUCCESSOR OF THE RAILROAD COMMISSION OF INDIANA, DEFENDANT IN ERROR.

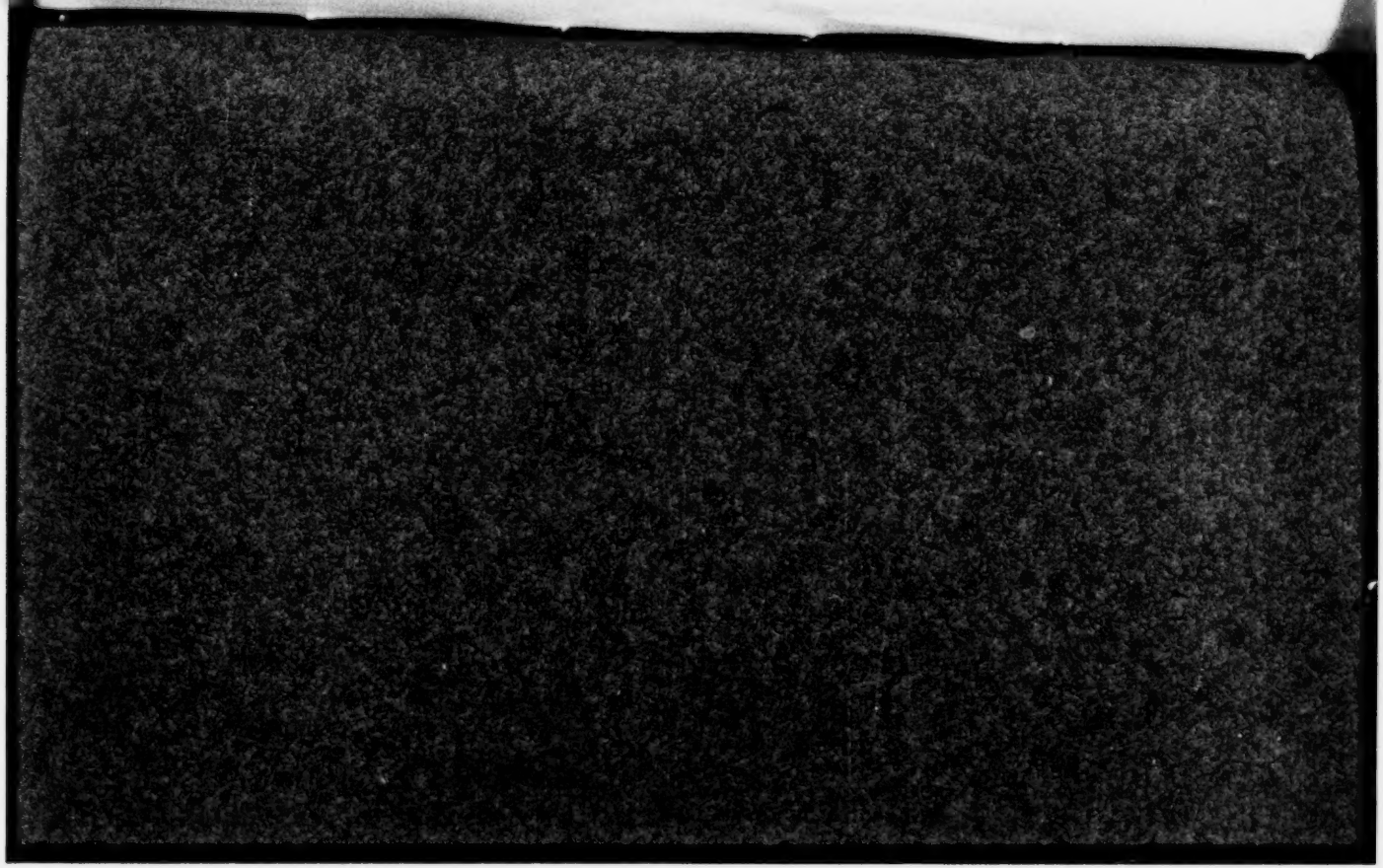
In Error to the Supreme Court of Indiana.

BRIEF FOR PLAINTIFF IN ERROR.

[redacted]

[redacted]

[redacted]



SUBJECT INDEX.

	Page.
Statement of the Case	1
State Statute	1
Order of the Commission	2
Specification of Errors Relied Upon	7
Brief of the Argument	8
Appendix—	
Complaint, Second Paragraph	24
Answer	30
Complaint, First Paragraph	19

TABLE OF CASES.

	Page
Atlantic Coast Line R. R. Co. vs. State of Georgia, 234 U. S. 280	9
Atchison, etc., R. Co. vs. Matthews, 174 U. S. 96, 100	17
Baltimore, etc., R. Co. vs. Railroad Commission, 196 Fed. Rep. 690	14
County of San Mateo vs. Southern Pacific R. R. Co., 13 Fed., p. 752	11
Chicago, etc., Ry. Co. vs. Minnesota, 134 U. S. 418, 457	11
Chicago, etc., Ry. Co. vs. Dey, 35 Fed. 866	17
Cook vs. State, 92 U. S. 220	17
Chicago, etc., Ry. Co. vs. Town of Salem, 166 Ind. 71	17
Garvin vs. Daussman, 114 Ind. 429, 433	11
Interstate Commerce Commission vs. Illinois Central, 215 U. S. 452, 470	14
Interstate Commerce Commission vs. Union Pacific, 222 U. S. 541, 547	14
Interstate Commerce Commission vs. Northern Pacific, 216 U. S. 538, 544	14
Louisville, etc., Ry. Co. vs. Commonwealth, 99 Ky. 132	17
Southern Ry. Co. vs. Railroad Commission of Indiana, 236 U. S. 439	10
Stuart vs. Palmer, 74 N. Y. 183	11
State of Washington ex rel. vs. Fairchild, 224 U. S. 510	12
Southern Pacific vs. Interstate Commerce Commission, 219 U. S. 433	14
State vs. Clark, 69 Conn. 371	17
Southern Indiana Ry. Co. vs. Railroad Commission, 172 Ind. 113	18
Terre Haute, etc., R. Co. vs. Indiana ex rel. Ketcham, 194 U. S. 579, 587	17
United States vs. Baltimore, etc., Ry. Co., 226 U. S. 14, 20	11
United States vs. Reese, 92 U. S. 220	17
Wisconsin, etc., R. Co. vs. Jacobson, 179 U. S. 287, 301	14
Yick Wo vs. Hopkins, 118 U. S. 356	17

(24,614)

Supreme Court of the United States

October Term, 1916.

No. 395.

VANDALIA RAILROAD COMPANY, PLAINTIFF IN ERROR.

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA, AS THE SUCCESSOR OF THE RAILROAD COMMISSION OF INDIANA, DEFENDANT IN ERROR.

In Error to the Supreme Court of Indiana.

STATEMENT OF THE CASE.

The General Assembly of the State of Indiana, at its session of 1909 enacted the following statute, to-wit:

> "AN ACT giving the railroad commission of Indiana specific powers to investigate and determine as to the efficiency of headlights now in use on locomotive engines on the railroads in Indiana, and to prescribe efficient and practicable headlights now in use on locomotive engines on the railroads in Indiana, (sic) and to prescribe efficient and practicable headlights and to make and enforce orders with refe.ence thereto, and declaring an emergency.
>
> SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That, in addition to the powers heretofore

granted to the railroad commission of Indiana that said commission be, and it is hereby specifically empowered, authorized and directed, as soon as practicable after the passage of this act, to investigate the condition and efficiency of headlights now in use on locomotive engines on the railroads in this state, and if found to be inadequate for the protection of persons and property, or any other purpose, to investigate and determine what would be the most practicable and efficient headlight for all purposes, and when the commission shall have so determined, to make and enforce against the railroad companies such order or orders as may be found to be necessary to require the equipment and installation of such headlights on the locomotives on the railroads in this state, and to this end said commission is given power in such investigation to examine the various kinds of lights that may be suitable for locomotive headlights, and appliances therefor, to consult experts in such matters and to require the attendance of witnesses and the production of papers, documents, and appliances.

SEC. 2. An emergency exists for the immediate taking effect of this act, the same therefore shall be in force from and after its passage."

On January 6, 1910, the Railroad Commission of Indiana, in pursuance of said statute, made and entered on its records and issued to plaintiff in error an order as follows, to-wit:

"IN THE MATTER OF INQUIRY AS TO THE CONDITION AND EFFICIENCY OF LOCOMOTIVE HEADLIGHTS IN THE STATE OF INDIANA.

The General Assembly in its acts of 1909, Chapter 128, page 323, having directed this commission to investigate the condition and efficiency of the locomotive headlights in use in the State of Indiana, and the commission having instituted an inquiry and investigation as required by said act and having given due notice, by its circular letter No. 39, to all the railroad companies using locomotive headlights, that hearing and conference in this behalf would take place the morning of Thursday, the 20th day of May, 1909, and on said day the said railroad companies, namely: (naming Vandalia Railroad Company and all other railroad companies operating in Indiana), having appeared by their counsel, receivers, managers, superintendents and master mechanics and having co-operated and assisted the commission in this investigation, and the commission having examined a great many managers, superintend-

ents, master mechanics, locomotive engineers and trainmen, from time to time, and having corresponded with the authorities of the states of the union where this matter has been considered and having consulted railroad men within and without the state and having taken scientific and expert advice, and especially the counsel of the dean of the schools of engineering and professors in said schools of Purdue University (a series of physical experiments and tests having been conducted under the direction of said dean) and the commission having made personal investigation by its members on the railroads and on locomotives using both oil and electric headlights and being fully advised and after full and laborious consideration, the commission finds:

That the oil headlights commonly in use on locomotive engines in this state are inadequate for the protection of persons and property and that headlights of greater illuminating power would be the most practicable and efficient for all purposes,

IT IS THEREFORE ORDERED, that in the place of said headlights every railroad corporation or receiver or lessee thereof operating any line of railroad in this state shall equip all locomotive engines used in the transportation of trains over the said railroads with headlights of not less than fifteen hundred (1,500) candle power; provided this order shall not apply to locomotives regularly used in the switching of cars or trains.

IT IS FURTHER ORDERED, that all of said railroad companies shall equip one-third of their said road engines with said headlights by the 1st day of July, 1910, an additional one-third of their said engines by the 1st day of January, 1911, and the remaining one-third by the 1st day of July, 1911.

IT IS FURTHER ORDERED, that said railroad companies shall report to the commission on the first day of July, 1910, on the first day of January, 1911, and on the first day of July, 1911, how many of their engines they have so equipped with headlights as required by this order, giving the whole number of engines in use by them, and a description of the headlight installed by them, and numbers of the engines upon which such headlights have been placed.

IT IS FURTHER ORDERED, that the secretary shall mail a certified copy by registered letter of this order to each of said railroad companies."

On February 4, 1910, in pursuance of Section 6 of the Act of March 9, 1907, of the Indiana General Assembly creating the commission, plaintiff in error commenced its suit in the Superior Court of Marion County, Indiana, against the Railroad Commission of Indiana to have said order decreed void and of no effect and set aside and to enjoin the commission from attempting to enforce the same. The complaint is in two paragraphs. The first attacks said statute as being unconstitutional and void on the following grounds, amongst others: 1. that it violates the commerce clause of the Federal Constitution and the statutes of the United States enacted thereunder, in that said act attempts to confer upon the Railroad Commission power and authority to prescribe how and in what manner plaintiff's locomotive engines engaged in interstate commerce shall be regulated and equipped, when the Congress of the United States under and by virtue of Section 8 of Article 1 of the Constitution of the United States has taken jurisdiction of and exercised its plenary power as to how and in what manner such locomotive engines shall be regulated and equipped; 2. that said act purports to authorize the Railroad Commission to make and enforce orders against the plaintiff without notice to the plaintiff and a hearing, and thereby deprives plaintiff of its property without due process of law, and deny to the plaintiff the equal protection of the laws, in violation of Section 1 of Article 14 in amendment of the Constitution of the United States.

The second paragraph of the complaint attacks the validity of said order on the following grounds, amongst others: 1. that said order is a mistake and abuse of power upon the part of the commission and therefore unreasonable and void in this: that the headlights prescribed by the order are not and would not be efficient and practicable headlights for all purposes, and are not as practicable and efficient for all purposes as the headlights now in use on plaintiff's locomotive engines; 2. that the use of the headlights prescribed by the order on plaintiff's locomotive engines used in the transportation of its trains will make the movement of said trains and engines unsafe and dangerous to plaintiff's passengers, employes and property; 3. that in order to comply with the order plaintiff would be required to equip its locomotive engines with electric or acetylene gas headlights, at a heavy cost both for installation and maintenance and for which there is no

necessity whatever for the protection of persons and property; 4. that in order to comply with the order plaintiff would be required to equip its locomotive engines which are engaged in interstate commerce with said headlights, when the Congress of the United States, under and in pursuance of Section 8 of Article 1 of the Constitution of the United States, has, by the enactment of statutes, prescribed the manner in which all locomotive engines engaged in interstate commerce shall be equipped, and the plaintiff has complied with and is complying with said statutes, and 5. that said order is so vague, indefinite and uncertain in its description of the headlight which it purports to require as to be entirely meaningless and void because said order wholly fails to specify at what distance from the source of the light the illuminating power of the same is to be measured, or at what angle from a horizontal or vertical plane, if either, passing through said light, the same is to be measured; or whether the required candlepower of the same is to be determined by averaging the intensity of said light at any given distance from the source thereof, and, if so, at what distance; or whether the intensity of illuminating power of said light is to be measured at any given point within the "spread" thereof or the arc covered by the rays of said light, and, if so, at what point; that the said order does not specify the character of the reflector, if any, nor the diameter nor the depth of said required headlight; nor whether said required candle-power may be developed by reflectors or lenses, or both, or whether such light must be fifteen hundred candle-power independent of such lenses or reflectors; that each of the foregoing elements is an essential factor in the ascertainment and measurement of the illuminating capacity of headlights and in the intelligible description thereof, and that there is no known standard by which such illuminating capacity may be measured and expressed in terms of candle-power in the absence of such factors; that it is and will be impossible for this plaintiff, or for any tribunal, to determine whether or not the installation and use of a given headlight is in compliance with the true intent of said order, provided the same should at some point develop fifteen hundred candle-power illuminating capacity; and that a headlight may be so designed, constructed and operated as to develop an illuminating capacity of fifteen hundred candle-power or more at a certain distance from the source of light

and at a certain point within the arc or "spread" of its rays, and yet be entirely useless and impracticable for any purpose whatever, and that the illuminating capacity of any headlight, expressed in candle-power terms, depends solely upon the point at which it is measured and to what extent the same is diffused or spread.

The defendant answered each paragraph of the complaint in substance that the railroad companies, parties to the proceeding in which said order was entered, applied to the commission for a rehearing, but that afterwards a committee representing the railroad companies appeared before the commission and represented that in view of the time and attention already given to the matter by the commission, the application for modification of the order was withdrawn, and that thereupon the application was dismissed. Wherefore the defendant says that this court has no power or jurisdiction to further proceed as to the matters and facts averred in the complaint, and prays to be hence discharged with its costs.

(For convenience of reference we embrace the complaint and answer in an appendix at the end of this brief.)

The plaintiff demurred to the defendant's answer, on the grounds: (1) that the facts stated in the answer are not sufficient to constitute a cause of defense to the complaint; (2) that the facts stated in the answer are not sufficient to abate the action; (3) that the facts stated in the answer are not sufficient to constitute an answer or plea in abatement of the action. The Superior Court overruled this demurrer, to which the plaintiff excepted and elected to stand upon its demurrer, and refused to plead further. Thereupon judgment was entered that the plaintiff take nothing by its suit, and that the defendant recover of the plaintiff its costs. Plaintiff appealed to the State Supreme Court and assigned as errors the overruling of its demurrer to the answer to the complaint. The Supreme Court affirmed the judgment of the court below, holding that "the complaint does not show a state of facts which would entitle the appellant to the relief sought, and hence the rule is applicable, a bad answer is good enough for a bad complaint."

The opinion of the court is annexed to the transcript of the record.

The case is in this Court on writ of error to the State Supreme Court.

The questions involved here are as to the validity of the said statute and the order of the Railroad Commission.

SPECIFICATION OF THE ERRORS RELIED UPON.

The State Supreme Court erred in its decision affirming the judgment of the court below in holding and deciding:

(1) That said statute is valid and not repugnant to the commerce clause of the Constitution of the United States and the laws of Congress enacted thereunder.

(2) That said statute is not repugnant to the Fourteenth Amendment to the Constitution of the United States.

(3) That said order of the Railroad Commission of Indiana is valid and not repugnant to the commerce clause of the Constitution of the United States and the laws of Congress enacted thereunder.

(4) That said order is valid and not repugnant to the Fourteenth Amendment to the Constitution of the United States.

(5) That said order is not unreasonable.

(6) That said order is not void for uncertainty and indefiniteness.

BRIEF OF THE ARGUMENT.

The holding of the Supreme Court that the complaint does not state facts which would entitle plaintiff in error to the relief sought, and that the answer is good enough for the complaint, was in effect carrying the demurrer to the answer back and sustaining it to the complaint. The demurrer admitted all of the facts well pleaded in the complaint. The facts well pleaded and pertinent to the questions here involved are that plaintiff in error is a consolidated railroad corporation organized and incorporated under the laws of the states of Indiana and Illinois; that it owns and operates a line of railroad extending from the city of Indianapolis through the county of Marion and other counties in said state, and through the state of Illinois to the city of East St. Louis in said state, and also other lines of railroad aggregating more than eight hundred miles of single track railroad; that it owns and operates in the movement of trains over its said railroad more than two hundred locomotives, all of which are equipped with practicable and efficient headlights for all purposes; that for the most part said trains and locomotive engines are used in the transportation of passengers and property over some part of said railroad between points in Indiana and points in other states, and all of said engines are used in the transportation of trains in the State of Indiana; that the commission will attempt to enforce said order and require the plaintiff to equip all of its said locomotive engines used in the transportation of trains over its said railroad in Indiana with the kind of headlights prescribed by said order; that the equipment of plaintiff's said locomotive engines with the headlights prescribed by said order would cost the plaintiff more than one hundred dollars per engine; that the headlights prescribed by said order are not and would not be efficient and practicable headlights for all purposes, and are not as practicable and efficient for all purposes as the headlights now in use on plaintiff's said locomotives; that the use of the headlights prescribed by said order on plaintiff's

locomotive engines used in the transportation of trains would make the movement of said trains and engines unsafe and dangerous for plaintiff's passengers and employes and property; that in order to comply with said order the plaintiff would be required to equip its said locomotive engines with electric or acetylene gas headlights at heavy cost, both for installation and maintenance, and for which there is no necessity whatever for the protection of persons and property; that in order to comply with said order plaintiff would be required to equip its locomotive engines which are engaged in interstate commerce with said headlights, when the Congress of the United States, under and in pursuance of section eight of article one of the Constitution of the United States has by the enactment of statutes prescribed the manner in which all locomotive engines engaged in interstate commerce should be equipped, and plaintiff has complied with and is complying with said statutes; that said order is so vague, indefinite and uncertain in its description of the headlights which it purports to require as to be entirely meaningless and void, alleging particularly the respects in which said order is vague, indefinite and uncertain in its description of the headlights.

These facts, we respectfully submit, entitled plaintiff in error to have the order declared void and set aside.

The proposition that the commission's order in question and the state statute in pursuance of which the order was entered are void as being repugnant to the commerce clause of the constitution, on the ground that the Congress has preempted the field of the regulation of equipment of locomotive engines used by common carriers engaged in interstate commerce, would, in view of the decision of this court in Atlantic Coast Line Railroad Co. vs. State of Georgia, 234 U. S. 280, be without merit were it not for the fact that since the decision of that case Congress has exercised its power as to equipment over the entire locomotive and tender and all parts and appurtenances thereof.

By the Act of March 4, 1915, entitled, "An act to amend an act entitled, 'an act to promote the safety of employes and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto,' approved February 17, 1911," it is provided that section two of the Act of February 17, 1911, shall apply to and include the entire

locomotive and tender and all parts and appurtenances thereof. The passage of this act *ipso facto* superseded and rendered void the state act and the order of the Railroad Commission in question. Southern Railway Company vs. Railroad Commission of Indiana, 236 U. S. 439.

If the act under which the order in question was made gives or purports to give authority to the Railroad Commission to make and enforce orders against the railroad companies, compliance with which would entail upon them great costs, or the failure to comply would subject them to severe penalties, without notice and opportunity to be heard, the act does not meet the "due process" requirement of the Fourteenth Amendment. That the act fails to meet that requirement is apparent from an examination of its provisions. The commission is specifically empowered, authorized, and directed to investigate the condition and efficiency of headlights in use on locomotive engines, and if found to be inadequate, to investigate and determine what would be the most practicable and efficient headlight, and when the commission shall have so determined, to make and enforce against the railroad companies such order or orders as may be found to be necessary to require the equipment and installation of such headlights, and the commission is given power in such investigation to examine the various kinds of lights that may be suitable, to consult experts in such matters, and to require the attendance of witnesses and the production of papers, documents, and appliances. There is no provision whatever for notice to the railroad companies to be affected, nor any opportunity given them for a hearing. There is no *requirement* that witnesses shall be heard or any evidence of any kind received by the commission, but on the contrary the commission is given authority to base its determination as to what is the most practicable and efficient headlight—and upon that determination make and enforce orders—wholly upon its own investigation.

In a case involving the validity of an order of the Interstate Commerce Commission which was shown to have been based more largely upon the commission's own investigation than upon the testimony of witnesses, this Court said:

"It would be a very strong proposition to say that the parties were bound in the higher courts by a finding based on specific investigations made in the case without notice to

them." United States vs. Baltimore, etc., Ry. Co., 226 U. S. 14, 20.

It should be observed that the commission as is shown by its statement regarding its proceedings in the matter before making the order, as set forth in the order, based its conclusions, to some extent, at least, upon its own investigation.

It is not enough that the railroad companies may in fact have notice, or may as a matter of favor have a hearing. The statute itself must *require* notice, and *give a right* to a hearing. The constitutional validity of the statute under which the proceeding is had is to be tested not by what has happened, but by what may be, done under it. Stuart vs. Palmer, 74 N. Y. 183.

Mr. Justice Field, in County of San Mateo vs. Southern Pacific R. R. Co., 13 Fed. on p. 752, stated the principle in these words:

> "But whatever the character of the proceeding, whether judicial or administrative, summary or protracted, and whether it takes property directly, or creates a charge or liability which may be the basis of taking it, the law directing the proceeding must provide for some kind of notice, and offer to the owner an opportunity to be heard or the proceeding will want the essential ingredient of due process of law. Nothing is more clearly established by a weight of authority absolutely overwhelming than that notice and opportunity to be heard are indispensable to the validity of the proceeding."

The Supreme Court of Indiana, speaking by Judge Mitchell, in Garvin vs. Daussman, 114 Ind. 429, 433, states it as follows:

> "It is without doubt essential to the validity of every law under which proceedings may be had for the taking of property, or to impose a burden upon it which may result in taking it, that the law make provision for giving some kind of notice at some stage in the proceeding, and that it afford the owner an opportunity to be heard."

See also Chicago, etc., Ry. Co. vs. Minnesota, 134 U. S. 418, 457.

It is not a sufficient answer to our contention upon this point to say that the railroads are given the right to attack the order by bringing a suit in court to set it aside, under the statute creating the Railroad Commission, under which this suit was brought, and in such suit would have a hearing, because in such suit the order would be treated as prima facie right, and there would be cast upon the railroad attacking the order the burden of showing that the order was improperly made, and during the pendency of the suit the railroad company would be subject to prosecution for the recovery of penalties for its violation.

Upon the facts alleged in the second paragraph of the complaint which are by the demurrer admitted to be true, the order of the commission is a taking of plaintiff in error's property without due process of law, in violation of the Fourteenth Amendment, as the order was made without authority of law, is not justified by public necessity, and is arbitrary and unreasonable. The facts alleged pertinent to the consideration of this proposition show that plaintiff in error's railway lines consist of more than eight hundred miles of single track and many miles of two and three parallel tracks, with many switches, turnouts, sidings and yards; that plaintiff in error owns and operates in the movement of its trains over said lines of railroad more than two hundred locomotive engines, which are equipped with practicable and efficient headlights for all purposes; that the headlights prescribed by the order are not and would not be practicable and efficient headlights for all purposes, and are not as practicable and efficient for all purposes as the headlights now in use upon plaintiff in error's locomotives, and the installation of the headlights required would cost plaintiff in error more than one hundred dollars per engine; that the use of the headlights prescribed will make the movement of plaintiff in error's trains and engines unsafe and dangerous to passengers, employes and property; that to comply with the order plaintiff in error would be required to equip its locomotive engines with electric or acetylene gas headlights at heavy cost both for installation and maintenance, for which there is no necessity whatever for the protection of persons and property.

In State of Washington ex rel. vs. Fairchild, 224 U. S. 510, the Court was considering an order of the Railroad Commission of the State of Washington requiring the railroad com-

pany to make track connections. The statute of Washington authorized the Railroad Commission, upon complaint made or upon inquiry on its own motion, on full hearing, to order that additional trackage or sidings be constructed, and that additional connections be made. The railroad company attacked the order on the ground that it was unreasonable; that there was no public necessity for the track connection ordered to be made, or that any convenience would be subserved by it; that the railroad company would be obliged to incur large expense to make the connection and be thereby deprived of its property without compensation and without due process of law, in violation of the Fourteenth Amendment. In delivering the opinion of the Court, Mr. Justice Lamar said:

> "The commission's order requiring the Oregon Company to make track connection was not a mere administrative regulation, but was a taking of property, since it compelled the defendant to expend money and prevented it from using for other purposes the land on which the tracks were to be laid. Its validity could not be sustained merely because of the fact that the carrier had been given an opportunity to be heard, but was to be tested by considering whether, in view of all the facts, the taking was arbitrary and unreasonable or was justified by the public necessities which the carrier could lawfully be compelled to meet. For the guaranty of the Constitution extends to the protection of fundamental rights,—to the substance of the order as well as to the notice and hearing which precede it. 'The mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation.' Chicago, etc., Ry. vs. Chicago, 166 U. S. 226, 236; Missouri Pacific Ry. vs. Nebraska, 164 U. S. 403, 416. So that where the taking is under an administrative regulation the defendant must not be denied the right to show that as matter of law the order was so arbitrary, unjust or unreasonable as to amount to a deprivation of property in violation of the Fourteenth Amendment." (pp. 523-24.)

And even although the order is, in form, within the commission's power, it is so unreasonable in its requirements as it affects plaintiff in error, as shown by the admitted facts set forth in the second paragraph of the complaint, as to render it

void. Int. Com. Com. vs. Ill. Cent., 215 U. S. 452, 470. Int. Com. Com. vs. Northern Pacific, 216 U. S. 538, 544. Southern Pacific vs. Int. Com. Com., 219 U. S. 433. Int. Com. Com. vs. Union Pacific, 222 U. S. 541, 547. Wisconsin, etc., R. Co. vs. Jacobson, 179 U. S. 287, 301.

The order is so uncertain and indefinite in the respects alleged in the second paragraph of the complaint that it is void and unenforcible. It was so held by Hon. Noble C. Butler, special master, and by Judge Anderson, of the District Court of the United States for the District of Indiana, in confirming the report of the master, in the case of Baltimore & Ohio R. Co. vs. Railroad Commission of Indiana, 196 Fed. 690, which was a suit by the Baltimore & Ohio Railroad Co. to set aside this same order. The argument of Mr. Butler in support of his decision upon this point is so well expressed that we take the liberty of adopting it as ours. He says:

> " 'Candle-power' is a term which is used in the measurement of light and has a definite and certain meaning. The unit of measurement is a standard candle or lamp constructed in accordance with specific requirements which are generally accepted and understood by all persons who are acquainted with the science of photometry. An equivalent of such candle or lamp, or a substitute for it, is furnished by an incandescent light of one candle-power which is used as a secondary standard in photometric tests and measurements. As indicated by the origin and definition of the term, it applies exclusively to the initial source of light—the power or intensity of it without extraneous aid of any sort.
>
> Locomotive headlights have an initial source of light and they also have reflectors which gather and concentrate the rays of light that would otherwise be emitted from the source in all directions and throw them forward upon the track and right of way. They serve as markers to indicate the head of a locomotive, and they illuminate the track and right of way in front of it. The term in one sense defines itself, for a locomotive headlight is a light at the head of a locomotive, and every light illuminates all objects within its range. If the words of the order are given their literal meaning, it requires all locomotives in the state, except such as are used in the switching of cars or trains, to be equipped with lights of not less than fifteen hundred candle-power at the head of them, which, with the aid

of reflectors, would make an illumination like that of a naval searchlight.

It is contended by the solicitor for the Commission that such a headlight, with an illumination which is far in excess of what is regarded as necessary, could not have been intended by its order.

But a locomotive headlight is a combination of an initial source of light with a reflector, both of which are essential and inseparable parts of it, and it may be described in the words of the solicitor for the Commission as an articulated whole. Such a combination, however, has not any candle-power of its own as distinguished from the candle-power of the initial source of light.

It is not denied that the headlights in present use upon the locomotives of the complainant satisfy all the requirements of a marker and furnish some degree of illumination upon the track and right of way. While the Commission admits that it is possible to have an excessive amount of illumination, it contends that the present amount of illumination is insufficient for the protection of persons and property. The controversy between the parties is rather over the degree and not the kind of illumination that should be furnished by a locomotive headlight.

Comparison of a source of light of unknown intensity with a known standard of light is made by the interposition of a photometric screen between the lights upon which their radiance is equalized, and the distance between the screen and each of the lights is then measured. The intensities of the lights are to one another as the squares of their respective distances from the screen in feet.

The candle-power of a source of light being ascertained, it is a constant quantity as long as the source of light is kept in proper condition, but the illumination from it diminishes according to the square of the distance in feet at which the illumination is measured. By the application of this rule and without the aid of a photometer, the amount of illumination furnished by a source of light of known candle-power at a given distance in any direction from it is the candle-power of the source divided by the square of the distance in feet, the quotient being in foot candles or candle-feet.

Reflectors are not involved in the production of a source of light. Radiation from the source is controlled by them. The shape and position, size and quality of a reflector regulates the direction and spread and amount of illumination in front of the locomotive. Illumination upon a surface or screen is *an effect* of

the source, and while the source is measured in candle-power its effect at a given distance, with or without the aid of a reflector, is measurable in foot candles or candle-feet, which, being multiplied by the square of the distance from the surface or screen, gives the measurement in apparent or equivalent candle-power, or in the number of standard candles which would be necessary to produce the same amount of light at the given distance.

There is but one light in a locomotive headlight and it has a candle-power of its own. Placing a reflector behind it does not create another light with a different candle-power. The candle-power of that original light without a reflector and the apparent or equivalent candle-power of the illumination from it at any point of distance are necessarily the same, but the apparent or equivalent candle-power of the illumination from a headlight varies at every point of distance according to the dimensions and use of the reflector. These variations are a demonstration of the fact that light thrown out by a reflector is wholly devoid of that constancy which is the primary and indispensable requisite of all candle-power as a standard of measurement. The apparent or equivalent candle-power of such a light is not an index of its candle-power because it evidently has none.

The difficulty of giving an intelligible meaning to the order of the Commission is not overcome by the substitution of "apparent or equivalent candle-power" for "candle-power" where these words occur in the order. Nothing in the order indicates the point at which the measurement should be made. Suggestions that the measurement should be made at any or every point on the axis of the beam, or at a point immediately in front of the case, or at the point of greatest illumination, indicate only that the point of measurement contemplated by the order is absolutely indeterminable. Variations in the measurement of apparent or equivalent candle-power in tests that were made at Avon in 1910 are as follows:

Oil at 250 feet	642
Oil at 350 feet	493
Oil at 500 feet	487
Acetylene at 200 feet	2,539
Acetylene at 350 feet	3,215
Acetylene at 500 feet	3,625
Electric at 200 feet	39,942
Electric at 350 feet	54,100
Electric at 500 feet	62,240

The candle-power of the lights that were measured is as follows:

Oil	28.1
Electric	394.64
Acetylene	17.07

The report of tests of acetylene headlights by the Bureau of Standards in the Department of Commerce and Labor on further consideration of the objections to them are now admitted in evidence and they show, in one instance, variations on the axis of the beam as follows:

At 14.14 feet	10,680
At 20. feet	13,560
At 28.28 feet	14,320
At 50 feet	12,000
At 100 feet	11,000

At different angles of declination from the axis the variations are greatly more accentuated. Nothing can be inferred from the measurement at one point as to the measurement at another point even when made at precisely the same angle.

The order of the Commission does not contain any provision with reference to the dimensions or use of reflectors, or the spread of light from them.

As a conclusion of law from these facts and for these reasons I find and report that the order of the Commission has not the certainty and definiteness which are required in a penal statute or order, and is null and void on that account. Railroad v. Salem, 166 Ind. 71; Cook v. State, 26 Ind. App. 278."

See also United States vs. Reese, 92 U. S. 220. Chicago, etc., Ry. Co. vs. Dey, 35 Fed. 866 (opinion by Brewer, J.). Cook vs. State, 26 Ind. App. 278. State vs. Clark, 69 Conn. 371. Louisville, etc., Ry. Co. vs. Commonwealth, 99 Ky. 132. Chicago, etc., Ry. Co. vs. Town of Salem, 166 Ind. 71. Baltimore & Ohio R. Co. vs. Railroad Commission of Indiana, 196 Fed. 690.

This court will put its own independent construction upon the order in question. Yick Wo vs. Hopkins, 118 U. S. 356. Atchison, etc., R. Co. vs. Matthews, 174 U. S. 96, 100. Terre Haute, etc., R. Co. vs. Indiana, ex rel. Ketcham, 194 U. S. 579, 587.

If the order is void, it could be successfully attacked by plaintiff in error by suit to set it aside at any time. And whether void or not, application to the commission for a rehearing was not a prerequisite to a suit to set it aside. Burns' Ann. Stat. 1908, Sec. 5536, suvdiv. (c); and Sec. 5537. Southern Indiana Ry. Co. vs. Railroad Commission, 172 Ind. 113.

Respectfully submitted,

SAMUEL O. PICKENS,
Attorney of Record for Plaintiff in Error.

FREDERICK D. McKENNEY,
D. P. WILLIAMS,
OWEN PICKENS,
Of Counsel for Plaintiff in Error.

APPENDIX.

The complaint, omitting the title and signature, is as follows, to-wit:

COMPLAINT.

FIRST PARAGRAPH.

Vandalia Railroad Company, plaintiff, complains of Railroad Commission of Indiana, and for first paragraph of its complaint says:

That the plaintiff ever since the 1st day of January, 1905, has been a consolidated railroad corporation organized and incorporated under and pursuant to the laws of the States of Indiana and Illinois; that the defendant is a commission created and existing under and by virtue of the laws of the State of Indiana; that ever since its incorporation the plaintiff has owned and operated and now owns and operates a line of railroad extending from the city of Indianapolis through the county of Marion and other counties in said state, and through the State of Illinois to the city of East St. Louis, in the State of Iliinois, also a line of railroad extending from the city of Indianapolis southwestwardly to the city of Vincennes, in the State of Indiana, also a line of railroad extending from the city of Terre Haute to the city of South Bend, in said state, also a line of railroad extending from the city of Logansport to the town of Butler, in said state, and also operates under lease a line of railroad between the city of Terre Haute, Indiana, and the city of Peoria, Illinois, all of said lines aggregating more than eight hundred (800) miles of single main track railroad, and many miles of which consist of two and three parallel tracks, with many switches, turnouts, sidings and yards, and appliances and appurtenances therewith connected; that plaintiff owns and operates in the movement of trains over its said railroad more than two hundred (200) locomotive engines, all of which are equipped with practicable and efficient headlights for all purposes; that for the most part said trains and locomotive engines are used in the trans-

portation of passengers and property over some part of said railroad between points in Indiana and points in other states, and all of said engines are used in the transportation of trains in the State of Indiana.

That on or about the 1st day of May, 1909, the defendant, without any petition or complaint therefor, but solely upon its own initiative and motion, assuming to act under and pursuant to authority to do so by virtue of the act of the general assembly of the State of Indiana, entitled, 'An Act giving the Railroad Commission of Indiana specific powers to investigate and determine as to the efficiency of headlights now in use on locomotive engines on the railroads in Indiana and to prescribe efficient and practicable headlights now in use on locomotive engines on the railroads in Indiana (sic), and to prescribe efficient and practicable headlights and make and enforce orders with reference thereto, and declaring an emergency,' approved March 6, 1909, being chapter 128 of the acts of the sixty-sixth session of said general assembly, instituted an inquiry and entered the same upon its docket by the title of, 'In the matter of inquiry as to the condition and efficiency of locomotive headlights in the State of Indiana; No. 322,' and issued a notice to plaintiff and all other steam railroad companies operating in the State of Indiana, that it had set the said inquiry for hearing and conference on the 20th day of May, 1909, at which time said companies and their representatives, and all persons interested might appear and advise the commission in that behalf.

That on the 6th day of January, 1910, defendant, still having said inquiry under consideration, and pretending to have thoroughly investigated and considered the question as to the efficiency of headlights in use on locomotive engines on the railroads in Indiana, and to have determined that the headlights now in use are inadequate and that the headlights prescribed by the order hereinafter set forth would be the most practicable and efficient headlights for all purposes, made and entered upon its records in said entitled cause a final order, and issued to the plaintiff a copy thereof in the words and figures following, to-wit: (The order at page 2 of this brief is here set forth.)

That said order has never been modified or set aside; that no complaint has been filed in any court by the defendant to have the validity of said order determined; or to enforce the

same against the plaintiff, but, that the defendant, under and by virtue of the authority claimed to be given it by the provisions of said act of March 6, 1909, will attempt to enforce said order and require the plaintiff to equip all of its said locomotive engines used in the transportation of trains over its said railroad in Indiana with the kind of headlights prescribed by said order; that the defendant claims that the failure of the plaintiff to equip its said locomotive engines with said headlights will subject the plaintiff to a penalty for each violation of said order of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00); that the defendant will, if the plaintiff fails to comply with said order within the time thereby given, institute suits against the plaintiff for said penalties and to compel the plaintiff to comply with said order, which will require the plaintiff to defend a multiplicity of suits and to incur great cost and expense in defending against said suits.

That the equipment of plaintiff's said locomotive engines with the headlights prescribed by said order will cost the plaintiff more than one hundred dollars ($100.00) per engine.

And plaintiff further avers that the said act of March 6, 1909, is unconstitutional and void, in this:

First: That said act violates section twenty-five (25) of article one (1) of the constitution of the state of Indiana, which provides that "no law shall be passed, the taking effect of which shall be made to depend upon any authority except as provided in this constitution."

Second: That it violates section eight (8) of article one (1) of the constitution of the United States and the statutes of the United States enacted thereunder and in pursuance thereof, in that said act attempts to confer upon said defendant power and authority to prescribe how and in what manner plaintiff's locomotive engines engaged in interstate commerce shall be regulated and equipped, when the Congress of the United States, under and by virtue of said section eight (8) of article one (1) of the constitution of the United States has taken jurisdiction of and exercised its plenary power as to how and in what manner such locomotive engines shall be regulated and equipped, by prescribing the kind of coupler, power brake, ash pan, brake connections and hand-holds with which such locomotives shall be equipped.

Third: That said act purports to authorize the Railroad Commission of Indiana to make and enforce orders against the plaintiff without notice to the plaintiff and a hearing, and thereby deprive plaintiff of its property without due process of law and deny to the plaintiff the equal protection of the laws, in violation of section one (1) of article fourteen (14) in amendment of the constitution of the United States, and section twelve (12) of article one (1) of the constitution of the state of Indiana.

Fourth: That said act is special class legislation in that it affects steam railroad companies only, interurban railroads not being subjected to the burdens that may be caused by its enforcement, and it is therefore repugnant to section twenty-three (23) of article one (1) and section twenty-three (23) of article four (4) of the constitution of the state of Indiana, and to section one (1) of the fourteenth (14th) amendment to the constitution of the United States.

Fifth: That the said act is in effect a delegation of legislative powers in violation of section one (1) of article four (4) of the constitution of the state of Indiana, and therefore void.

Plaintiff further avers that after the entering of said order by the defendant and before the expiration of thirty days from the date of the entry of said order, to-wit: on January 19, 1910, H. F. Houghton, General Superintendent of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, as chairman of a committee which had theretofore been appointed to represent the plaintiff and the other railroad companies named in said order to consider the matter of presenting a petition to the defendant for and on behalf of the plaintiff and said other railroad companies, for a rehearing of the case in which said order was entered, and for the modification and change of said order, acting for said committee and in behalf of the plaintiff and said other railroad companies delivered a written communication to Hon. William J. Wood, chairman of the defendant, pointing out certain objections of said railroad companies to said order, and which communication concluded as follows:

> "And as chairman of the committee of Indiana railroads appointed to present to the Commission the ob-

jections of the railroads to high-power headlights, I desire to make formal application for a suspension of the order of the Commission, and for a further hearing on the the subject."

That on January 24, 1910, the said H. F. Houghton, as chairman of said committee, received from the said Hon. William J. Wood, a communication in writing, in which it was stated that the said William J. Wood had submitted said Houghton's communication of January 19, 1910, to the Commission; that the Commission would not suspend the order it had theretofore made in the headlight case, but would treat said Houghton's communication as an application for a modification of the order, and would hear said Houghton and such other persons as he might desire to appear before the Commission for a reasonable length of time on Wednesday, the 2nd day of February, at ten o'clock A. M., and stated:

> "The Commission feels that, having engaged in this investigation from May 1, 1909, to the present time, and having made personal tests, and having had tests made by the professors of Purdue University, we do not care to have further tests made, but will be glad to hear you on the tests that have already been made and on any new matter you may have, or any reasonable objection you desire to make to the order we have made in this case. I will expect you, as chairman of the committee, to advise the carriers interested of the hearing Wednesday."

That on Wednesday, the 2nd day of February, 1910, in pursuance of the suggestion of said William J. Wood in his communication of January 24, 1910, the said committee representing the plaintiff and said other railroad companies appeared before the defendant, the Commission then being in session, and stated to the Commission that the plaintiff and said other railroad companies regarded said order as unfair and unjust to the plaintiff and said other railroad companies, and that the same ought to be set aside or modified, but that the said railroad companies had nothing further to offer upon the matter; that they felt that they had made their case justifying the setting aside of said order, and that thereupon the Commission, by its chairman, stated that the Commission had thoroughly considered the case, and that the order, as entered, would stand as a final order of the Commission.

Wherefore, the plaintiff prays the Court to decree that said order is void and of no effect, and to set aside said order and enjoin the defendant from enforcing or attempting to enforce the same, and from collecting or attempting to collect from the plaintiff penalties for its failure to comply with said order, and for all other proper relief.

SECOND PARAGRAPH.

Vandalia Railroad Company, plaintiff, complains of the Railroad Commission of Indiana, and for second paragraph of complaint says:

That the plaintiff ever since the first day of January, 1905, has been a consolidated railroad corporation organized and incorporated under and pursuant to the laws of the States of Indiana and Illinois; that the defendant is a Commission created and existing under and by virtue of the laws of the State of Indiana; that ever since its incorporation the plaintiff has owned and operated and now owns and operates a line of railroad extending from the City of Indianapolis through the County of Marion and other counties in said State, and through the State of Illinois to the City of East St. Louis, in the State of Illinois; also a line of railroad extending from the City of Indianapolis southwestwardly to the City of Vincennes, in the State of Indiana; also a line of railroad extending from the City of Terre Haute to the City of South Bend, in said State; also a line of railroad extending from the City of Logansport to the Town of Butler, in said State, and also operated under lease a line of railroad between the City of Terre Haute, Indiana, and the City of Peoria, Illinois, all of said lines aggregating more than eight hundred (800) miles of single main track railroad and many miles of which consist of two and three parallel tracks, with many switches, turnouts, sidings and yards, and appliances and appurtenances connected therewith; that plaintiff owns and operates in the movement of trains over the said railroad more than two hundred (200) locomotive engines, all of which are equipped with practicable and efficient headlights for all purposes; that for the most part said trains and locomotive engines are used in the transportation of passengers and property over some parts of

said railroad, between points in Indiana and points in other States, and all of said locomotive engines are used in the transportation of trains in the State of Indiana.

That on or about the 1st day of May, 1909, the defendant, without any petition or complaint therefor, but solely upon its own initiative and motion, assuming to act under and in pursuance of authority to do so by virtue of the act of the General Assembly of the State of Indiana, entitled "An Act giving the Railroad Commission of Indiana specific powers to investigate and determine as to the efficiency of headlights now in use on locomotive engines on the railroads in Indiana and to prescribe efficient and practicable headlights now in use on locomotive engines on the railroads in Indiana (sic) and to prescribe efficient and practicable headlights and make and enforce orders with reference thereto, and declaring an emergency," approved March 6, 1909, being chapter 128 of the acts of the sixty-sixth session of said General Assembly, instituted an inquiry and entered the same upon its docket by the title of "In the matter of inquiry as to the condition and efficiency of locomotive headlights in the State of Indiana; No. 322," and issued a notice to plaintiff and all other steam railroad companies operating in the State of Indiana, that it had set the said inquiry for hearing and conference on the 20th day of May, 1909, at which time said companies and their representatives, and all persons interested might appear and advise the Commission in that behalf.

That on the 6th day of January, 1910, defendant, still having said inquiry under consideration, and pretending to have thoroughly investigated and considered the question as to the efficiency of headlights in use on locomotive engines on the railroads in Indiana, and to have determined that the headlights now in use are inadequate and that the headlights prescribed by the order hereinafter set forth would be the most practicable and efficient headlights for all purposes made and entered upon its records in said entitled cause a final order, and issued to the plaintiff a copy thereof, in the words and figures following, to-wit: (The order at page 2 of this brief is here set forth.)

That said order has never been modified or set aside; that no complaint has been filed in any court by the defendant to have the validity of said order determined, or to enforce the same against the plaintiff, but that the defendant under and

by virtue of the authority claimed to be given it by the provisions of said act will attempt to enforce said order and require the plaintiff to equip all of its said locomotive engines used in the transportation of trains over its said railroad in Indiana with the kind of headlights prescribed by said order; that the defendant claims that the failure of the plaintiff to equip its said locomotive engines with said headlights so prescribed will subject the plaintiff to a penalty for each violation of said order of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00); that the defendant will, if the plaintiff fails to comply with said order within the time thereby given, institute suits against the plaintiff for said penalties, and to compel the plaintiff to comply with the said order, which will require the plaintiff to defend a multiplicity of suits and will cause the plaintiff to incur great cost and expense in defending against said suits; that the equipment of plaintiff's said locomotive engines with the headlights prescribed by said order will cost the plaintiff more than one hundred dollars ($100.00) per engine.

And plaintiff further avers that the said order is a mistake and abuse of power upon the part of the defendant, and therefore unreasonable and void, in this:

First: That the headlights prescribed by said order are not and would not be efficient and practicable headlights for all purposes, and are not as practicable and efficient for all purposes as the headlights now in use on plaintiff's said locomotive engines.

Second: That the use of the headlights prescribed by said order on plaintiff's locomotive engines used in the transportation of its said trains will make the movement of said trains and engines unsafe and dangerous to plaintiff's passengers, employes and property.

Third: That in order to comply with said order the plaintiff would be required to equip its locomotive engines with electric or acetylene gas headlights, at heavy cost both for installation and maintenance, and for which there is no necessity whatever for the protection of persons and property.

Fourth: That in order to comply with said order plaintiff would be required to equip its locomotive engines which are engaged in interstate commerce with said headlights, when the Congress of the United States, under and in pursuance of section eight (8) of article one (1) of the Constitution of the United States, has, by the enactment of statutes, prescribed the manner in which all locomotive engines engaged in interstate commerce shall be equipped, and the plaintiff has complied with and is complying with said statutes.

Fifth: That the power attempted to be conferred on the defendant by said Act of March 6, 1909, to require locomotive engines on the railroads in Indiana to be equipped with such headlights as may be prescribed by the defendant, is not expressed in the title of said act, as required by section nineteen (19) of article four (4) of the Constitution of the State of Indiana, and the said order of the defendant was therefore made in the absence of any law conferring upon the defendant the power to make it, and is therefore void.

Plaintiff further avers that said order of said defendant is so vague, indefinite and uncertain in its description of the headlight which it purports to require as to be entirely meaningless and void, because said order wholly fails to specify at what distance from the source of the light the illuminating power of the same is to be measured, or at what angle from a horizontal or vertical plane, if either, passing through said light the same is to be measured; or whether the required candle-power of the same is to be determined by averaging the intensity of said light at any given distance from the source thereof, and, if so, at what distance; or whether the intensity of illuminating power of said light is to be measured at any given point within the "spread" thereof or the arc covered by the rays of said light, and, if so, at what point; that the said order does not specify the character of the reflector, if any, nor the diameter nor the depth of said required headlight; nor whether said required candle-power may be developed by reflectors or lenses, or both, or whether such light must be fifteen hundred candle-power independent of such lenses or reflectors.

That each of the foregoing elements is an essential factor in the ascertainment and measurement of the illuminating capacity of headlights and in the intelligible description

thereof, and that there is no known standard by which such illuminating capacity may be measured and expressed in terms of candle-power in the absence of such factors.

That it is and will be impossible for this plaintiff, or for any tribunal, to determine whether or not the installation and use of a given headlight is in compliance with the true intent of said order, provided the same should at some point develop fifteen hundred candle-power illuminating capacity; and that a headlight may be so designed, constructed and operated as to develop an illuminating capacity of fifteen hundred candle-power or more at a certain distance from the source of light and at a certain point within the arc or "spread" of its rays, and yet be entirely useless and impracticable for any purpose whatever, and that the illuminating capacity of any headlight, expressed in candle-power terms, depends solely upon the point at which it is measured and to what extent the same is diffused or spread.

Plaintiff further avers that after the entering of said order by the defendant and before the expiration of thirty days from the date of the entry of said order, to-wit: On January 19, 1910, H. F. Houghton, general superintendent of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, as chairman of a committee which had theretofore been appointed to represent the plaintiff and the other railroad companies named in said order to consider the matter of presenting a petition to the defendant for and on behalf of the plaintiff and said other railroad companies for a rehearing of the case in which said order was entered, and for the modification and change of said order acting for said committee and in behalf of the plaintiff and said other railroad companies, delivered a written communication to Hon. William J. Wood, chairman of the defendant, pointing out certain objections of said railroad companies to said order, and which communication concluded as follows:

> "And as chairman of the committee of Indiana railroads appointed to present to the Commission the objections of the railroads to high-power headlights, I desire to make formal application for a suspension of the order of the Commission, and for a further hearing on the the subject."

That on January 24, 1910, the said H. F. Houghton, as chairman of said committee, received from the said Hon. William

J. Wood, a communication in writing, in which was stated that the said William J. Wood had submitted said Houghton's communication of January 19, 1910, to the Commission; that the Commission would not suspend the order it had theretofore made in the headlight case, but would treat said Houghton's communication as an application for a modification of the order, and would hear said Houghton and such other persons as he might desire to appear before the Commission for a reasonable length of time on Wednesday, the 2nd day of February, at ten o'clock A. M., and stated:

> "The Commission feels that, having engaged in this investigation from May 1, 1909, to the present time, and having made personal tests, and having had tests made by the professors of Purdue University, we do not care to have further tests made, but will be glad to hear you on the tests that have already been, and on any new matter you may have, or any reasonable objection you desire to make to the order we have made in this case. I will expect you as chairman of the committee, to advise the carriers interested of the hearing Wednesday."

That on Wednesday, the 2nd day of February, 1910, in pursuance of the suggestion of said William J. Wood in his communication of January 24, 1910, the said committee representing the plaintiff and said other railroad companies appeared before the defendant, the Commission then being in session, and stated to the Commission that the plaintiff and said other railroad companies regarded said order as unfair and unjust to the plaintiff and said other railroad companies, and that the same ought to be set aside or modified, but the said railroad companies had nothing further to offer upon the matter; that they felt that they had made their case justifying the setting aside of said order, and that thereupon the Commission, by its chairman, stated that the Commission had thoroughly considered the case, and that the order as entered would stand as a final order of the Commission.

Wherefore, plaintiff prays the Court to decree the said order void and of no effect, and to set aside said order, and enjoin the defendant from enforcing or attempting to enforce the same, or collecting or attempting to collect from the plaintiff penalties for its failure to comply with said order, and for all other proper relief.

ANSWER.

The Commission's answer to the complaint is as follows, to-wit:

The defendant for its answer to the first paragraph and second paragraph of the second amended complaint says, that on the 19th day of January, 1910, H. F. Houghton, general superintendent of the C., C., C. & St. L. Ry. Co., as chairman of a committee which had theretofore been appointed to represent the plaintiff and the other railroad companies named in said order, did write a letter addressed to William J. Wood, chairman Railroad Commission of Indiana, containing the sentences set forth in said paragraph of the amended complaint, of which letter the following is a copy:

"January 19, 1910.

Mr. Wm. J. Wood, Chairman, Railroad Commission of Indiana,
Indianapolis, Indiana.

Dear Mr. Wood:

I have yours of the 13th, which was in reply to mine of the 12th relative to the Commission's order in the headlight matter.

I feel sure that on reflection you will recall that in the conference between yourself, Mr. Crawford and the writer at the time we were arranging for the tests, it was agreed that the result of the Purdue tests as would be reported by Dr. Benjamin of the Purdue Engineering Schools would be open for discussion between us, that is, between the Commission and the representatives of the railroads, and any others who chose to take part in it, and we have been waiting to hear from the Commission that the Purdue report had been received.

The very great objection which the railroads have to powerful headlights and the pains that we took to present our objections, I thought would make it clear to the Commission that we certainly would desire to be heard, if after doing so the Commission still thought it desirable to order the high power lights. The decision of the Commission apparently was not reached until after Mr. Dowling left it, and as Mr. Payne, the new member, has no opportunity to see any of the tests, and could not in a few days between his taking office and the rendering of the decision have given the question any adequate study, I feel that we should be given

an opportunity to make further tests to demonstrate to him and the other members of the Commission the very objectionable points in the high power headlights.

The order of the Commission calling for a 1,500 candle-power light, makes it necessary to use the electric arc light, as no other light that has yet been produced is strong enough, and as chairman of the committee of Indiana railroads appointed to present to the Commission the objections of the railroads to high power headlights, I desire to make formal application for a suspension of the order of the commission, and have a further hearing on the subject.

Yours truly,

H. F. HOUGHTON."

And that thereafter on the 24th day of January, 1910, the said William J. Wood, as chairman of the defendant, the Railroad Commission of Indiana, wrote and delivered to said H. F. Houghton a letter, of which the following is a copy:

"January 24, 1910.
322

Mr. H. F. Hougton, General Superintendent,
C. C. C. & St. L. Ry. Co., Indianapolis.

Dear Sir:

I submitted your letter of January 19th with reference to the Commission's order in the headlight case to the Commission.

Under the General Commission Act and under our practice we have the authority to alter, change or modify any final order made by the Commission. The Commission will not suspend the order it has heretofore made in the headlight case, but will treat your letter as an application for a modification of the final order, and as I have stated to you on the telephone, will hear you and Mr. Crawford and such other persons as you may desire to appear before us, for a reasonable length of time on next Wednesday, the 2nd day of February, at 10:00 a. m.

I do not recall the agreement you say made between you and Mr. Crawford and myself with reference to another hearing after the Purdue report came in, but the Commission desires in every case to proceed carefully and give the carriers interested full opportunity to say anything that would have bearing on the subject, and hence we give you the opportunity, as stated, next Wednesday.

You are mistaken also in thinking that Mr. Dowling, the retiring member, did not take part in the con-

sideration and to some extent in the final decision of this case. His view with reference to this matter was subjected to writing and will be made part of the record. I may add also, that so far as Mr. Payne is concerned, his experience as a locomotive engineer enabled him rapidly to consider the points involved in this case. He is just as definite in his views about it as are the other two members of the Commission.

You are further greatly mistaken in the proposition that our order excludes acetylene gas. On this point we have the very best testimony that it does not exclude such headlights.

I note also that you speak of further tests. The Commission feels that having engaged in this investigation from May 1, 1909, to the present time, and having made personal tests and having had tests made by the professors at Purdue University, we do not care to have further tests made, but we will be glad to hear you on the tests that have already been made and any new matter you may have or any reasonable objection you desire to make to the order we have made in this case.

I am sending you by your messenger two copies of the Purdue report. One is complete and is intended for Mr. Crawford's file. The other is as complete as we can make it, and has, indeed, everything except the blueprints, which you will find in the copy for Mr. Crawford.

I will expect you as chairman of the committee to advise the carriers interested of the hearing Wednesday.

Yours very truly,
Chairman."

The defendant further avers that on said 24th day of January, 1910, this defendant did enter its order touching the application made in said letter of H. F. Houghton in the words and figures following:

"STATE OF INDIANA,
RAILROAD COMMISSION OF INDIANA.

No. 322.

IN THE MATTER OF THE INQUIRY AS TO THE CONDITION AND EFFICIENCY OF LOCOMOTIVE HEADLIGHTS IN THE STATE OF INDIANA.

In the above entitled case, application having been

made by H. F. Houghton, Gen. Supt. of the C. C. C. & St. L. Ry. Co., for himself and the other carriers interested for modification of the final order made in this case—

IT IS ORDERED that on Wednesday, the 2nd day of Feb., 1910, at 10 a. m. respondents will be heard on their application to change or modify the original order.

(Read and approved Jan. 24, 1910.)"

The defendant further avers that on said 2nd day of February, 1910, this defendant convened in session for the purpose of hearing said H. F. Houghton and any other of the railroad companies affected by said order upon such application, and thereupon on said date the following proceedings were had, as shown and set forth in the records of the proceedings had before and of the orders made by this defendant:

"STATE OF INDIANA
RAILROAD COMMISSION OF INDIANA.

No. 322

IN THE MATTER OF INQUIRY AS
TO THE CONDITION OF LOCOMOTIVE
HEADLIGHTS IN THE STATE OF INDIANA.

In the above entitled case the application for modification coming on to be heard, the carriers appeared by H. F. Houghton, chairman of the committee, and S. O. Pickens and Frank Littleton, counsel, and represented to the Commission that in view of the time and attention already given to this matter by the Commission the application for modification of the order was withdrawn, and therefore after consideration:

IT IS ORDERED, that the matter of the application for modification of the final order of the Commission in this proceeding be and the same is hereby dismissed.

W. J. WOOD, Chairman.

(Read and approved Feb. 2, 1910.)"

Wherefore, This defendant says that this Court has no power or jurisdiction to further proceed as to the matters and facts averred in the second amended complaint in this cause, and the defendant prays to be hence discharged with its costs.

FILED
OCT 30 1918
JAMES D. MAHER

Supreme Court of the United States

October Term, 1918.

No. 81.

VANDALIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA, AS THE SUCCESSOR OF THE RAILROAD COMMISSION OF INDIANA, DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Indiana.

BRIEF OF DEFENDANT IN ERROR.

EVAN B. STOTSENBURG,
Attorney-General,
Attorney for Defendant in Error.

BURT NEW,
WILBUR T. GRUBER,
Of Counsel.

SUBJECT INDEX.

	PAGE
Statement of the Case	1
Brief of the argument	3

TABLE OF CASES.

PAGE

Antoni v. Greenbow, 107 U. S. 769 11
Atlantic Coast Line Ry. Co. v. Goldsboro, 232 U. S. 548 15
Atlantic Coast Line Ry. Co. v. Georgia, 234 U. S. 280 ..... 3, 4, 5, 6, 7, 9, 13, 14
Atlantic etc. Ry. Co. v. Mazursky, 216 U. S. 122 7
Atlantic etc. Ry. Co. v. N. C. Ry. Com., 206 U. S. 1 9
Baltimore Trac. Co. v. Baltimore Belt Ry. Co., 151 U. S. 137 16
Barbier v. Connolly, 113 U. S. 31 ..... 12, 14
Bones v. Booth, 2 W. Bl. 1226 18
Booth v. Indiana, 237 U. S. 391 16
Booth v. Illinois, 184 U. S. 425 6
Buttfield v. Stranahan, 192 U. S. 470 ..... 8, 9
Chicago, B. & Q. Ry. Co. v. Illinois, 200 U. S. 561 ..... 9, 14
Chicago, B. & Q. Ry. Co. v. McGuire, 219 U. S. 549 9
Chicago, etc. Ry. Co. v. Arkansas, 219 U. S. 453 ..... 4, 5, 6, 7
Chicago, etc. Ry. Co. v. Solan, 169 U. S. 133 ..... 4, 7
Cleveland etc. Ry. Co. v. Illinois, 177 U. S. 514 4
Cliquot v. United States, 3 Wall. 114 18
Collins v. Texas, 223 U. S. 288 18
Cooley v. Port Wardens, 12 How. 299 4
County of Mobile v. Kimball, 102 U. S. 691 5
Davidson v. New Orleans, 96 U. S. 97 12
Dred Scott v. Sanford, 19 How. 393 ..... 3, 4
Erb v. Morasch, 177 U. S. 548 13
Field v. Clark, 143 U. S. 649 ..... 8, 9
Fisher v. Bligh, 2 Cranch. 399 16
Gibbons v. Ogden, 9 Wheat. 1 4
Grand Trunk etc. Ry. Co. v. Railroad Commission, 221 U. S. 400 ..... 8, 10
Hallinger v. Davis, 146 U. S. 314 16
Hennington v. Georgia, 163 U. S. 299 4
Holden v. Hardy, 169 U. S. 366 12
Hooker v. Los Angeles, 188 U. S. 314 11
Interstate Com. Com. v. Goodrich, etc. Co., 244 U. S. 194 9
Interstate Com. Com. v. Union Pac. Ry. Co., 222 U. S. 541 ..... 10, 18
Iowa Central Ry. Co. v. Iowa, 160 U. S. 389 11
Johnson v. So. Pac. Ry. Co., 196 U. S. 1 17
Jones v. Brim, 165 U. S. 180 12
Lake Shore etc. Ry. Co. v. Ohio, 173 U. S. 285 ..... 4, 7
Long Island etc. Co. v. Brooklyn, 166 U. S. 685 11
Louisville & N. Ry. Co. v. Garrett, 231 U. S. 298 11
Louisville & N. Ry. Co. v. Schmidt, 177 U. S. 230 11
McLean v. Arkansas, 211 U. S. 539 ..... 9, 13, 14
McPherson v. Blacher, 146 U. S. 139 14
Marchant v. Pennsylvania Ry. Co., 156 U. S. 380 14
Marshall Field Co. v. Clark, 143 U. S. 649 9
Miller v. Ammon, 145 U. S. 421 16
Missouri etc. Ry. Co. v. Haber, 169 U. S. 613 ..... 4, 5
Missouri etc. Ry. Co. v. Larabee Mills Co., 211 U. S. 612 ..... 4, 5, 7, 8

Missouri etc. Ry. Co. v. Humes, 115 N. S. 512 14
Mondou v. New York etc. Ry. Co., 223 U. S. 1 5
Mugler v. Kansas, 123 U. S. 633 12
Munn v. Illinois, 94 U. S. 113 ..... 13, 14
New York etc. Ry. Co. v. New York, 165 U. S. 628 ..... 4, 5, 6, 7, 12, 14
New York & N. E. Ry. Co. v. Bristol, 151 U. S. 556 9
Otis v. Parker, 187 U. S. 606 13
Pembina etc. Co. v. Pennsylvania, 125 U. S. 181 14
Pennsylvania Ry. Co. v. Hughes, 191 U. S. 477 7
Pittsburg etc. Ry. Co. v. Indiana, 223 U. S. 713 5
Powell v. Pennsylvania, 127 U. S. 678 12
Purity etc. Co. v. Lynch, 226 U. S. 192 6
Railroad Com. Cases, 116 U. S. 307 12
Red "C" etc. Co. v. Board, 222 U. S. 380 18
Reiman v. Little Rock, 237 U. S. 171 15
Richmond etc. Ry. Co. v. Patterson etc. Co., 169 U. S. 311 7
Savage & Jones, 225 U. S. 501 ..... 4, 5
Sinnot v. Davenport, 22 How. 227 5
Smiley v. Kansas, 196 U. S. 447 16
Taylor v. United States, 3 How. 197 18
Turner v. Warren, 2 Strange 1079 18
Union Bridge Co. v. United States, 204 U. S. 365 ..... 8, 9
United States v. Hodson, 10 Wall. 395 18
Vandalia Ry. Co. v. Railroad Com., 182 Ind. 382 ..... 11, 15
Wadley So. Ry. Co. v. Georgia, 235 U. S. 651 11
Watson v. Maryland, 218 U. S. 173 ..... 11, 13, 16
Wilson v. North Carolina, 169 U. S. 586 11
Wisconsin etc. Ry. Co. v. Jacobson, 179 U. S. 287 13
York v. Texas, 137 U. S. 15 11

Supreme Court of the United States

October Term, 1916.

No. 81.

VANDALIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC SERVICE COMMISSION OF INDIANA, AS THE SUCCESSOR OF THE RAILROAD COMMISSION OF INDIANA, DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Indiana.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The assignment of errors in this court contains five specifications of error wherein it is claimed the proceedings and judgment of the Supreme Court of Indiana is erroneous.

These specifications call in question the correctness of the judgment of the Supreme Court of Indiana upon five propositions, namely: *First.* Whether the Act of the General Assembly of the State of Indiana of 1909, being Chapter 128 of said acts (Acts, 1909, p. 323) is void as being repugnant to the Commerce Clause of the Constitution of the United States and the laws enacted by Congress thereunder; *Second.* Whether the final order of the Railroad Commission of Indiana made and entered under and in pursuance of the provisions of said Act of the General Assembly

of the State of Indiana of 1909, is repugnant to the Commerce Clause of the Constitution of the United States and the laws enacted by Congress thereunder; *Third.* Whether said Act of the General Assembly of the State of Indiana of 1909, is in violation of the 14th Amendment of the Constitution of the United States; *Fourth.* Whether the said final order of the Railroad Commission of Indiana made and entered under and in pursuance of the provisions of said Act of the General Assembly of the State of Indiana of 1909, is void as being repugnant to the 14th Amendment of the Constitution of the United States; *Fifth.* Whether the said final order of the Railroad Commission of Indiana made and entered under and in pursuance of the provisions of said Act of the General Assembly of the State of Indiana of 1909, is void for uncertainty and indefiniteness.

BRIEF OF THE ARGUMENT.

I.

The Act is not in violation of the Commerce Clause of Article 1 of the Constitution of the United States, nor of any rule or regulation of the Interstate Commerce Commission made and entered pursuant to Section 2 of the Act of Congress of March 4, 1915 (Public, No. 318), Chapter 169, Sess. III, 63rd Congress, nor of any act of Congress enacted under authority of said commerce clause.

1. The General Assembly of the State of Indiana in the exercise of the police power of the State has the right to require that locomotive engines on the railroads in this State shall be equipped with adequate and sufficient headlights.

> Atlantic, etc., R. Co. v. State, 135 Geo. 545,
> 32 L. R. A. (n. s.) 20, 31, sustaining the validity of the Georgia Headlight Act, affirmed 234 U. S., 280.

2. The Constitution provides that: "The Congress shall have power . . . to regulate commerce . . . among the several States, and . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers". It also provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people".

> Sec. 8 Article 1, of the U. S. Constitution;
> 10th Amendment to the U. S. Constitution.

3. The rule for the construction of this constitutional provision is that, "the enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people".

> 9th Amendment to U. S. Constitution;
> Sec. 33, Burns' Indiana R.S., 1914;
> Dred Scott v. Sanford, 19 How. 393, 511;
> 1 Story, Const., Sec. 302.

(a) The 9th and 10th amendments to the Constitution of the United States were designed to include the reserved rights of the States, and the people, within all the sanctions of that instrument, and to bind the authorities, State and Federal, by the judicial

oath it prescribes, to their recognition and observance. They arose from the want of drawing a clear and distinct line between the powers to be exercised by Congress and by the States.

Dred Scott v. Sanford, 19 How. 393, 511;
1 Story, Constitution, Sec. 302.

4. The police power—the power to protect the lives and property of the people within the State—has not been delegated to the United States by the Constitution nor prohibited by it to the States, and is, therefore, reserved to the States, and has never been surrendered by the States.

Chicago, etc., R. Co. v. Arkansas, 219 U. S. 453, 465;
Missouri, etc., R. Co. v. Haber, 169 U. S. 613, 628;
Hennington v. Georgia, 163 U. S. 299;
Lake Shore, etc., R. Co. v. Ohio, 173 U. S. 285, 291;
Chicago, etc., R. Co. v. Solan, 169 U. S. 133, 137, 138.

5. The mere grant to Congress of the power to regulate commerce among the States did not, of itself and without legislation by Congress either directly or through a subordinate body, imply a prohibition on the States, not impair the authority of the States to establish such reasonable regulations as are appropriate for the protection of persons and property within the State.

New York, etc., R. Co. v. New York, 165 U. S. 628, 631;
Lake Shore, etc., R. Co. v. Ohio, 173 U. S. 285, 299;
Missouri, etc., R. Co. v. Larabee, etc., Co. 211 U. S. U. S. 612, 621, 623;
Gibbons v. Ogden, 9 Wheat, l. 211;
Cooley v. Port Wardens, 12 How. 299, 319;
Cleveland, etc., R. Co. v. Illinois, 177 U. S. 514, 516;
Atlantic Coast Line Ry. v. Georgia, 234 U. S. 280, 294.

6. The intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field.

Savage v. Jones, 225 U. S. 501, 533;
Missouri Pac. Ry. Co. v. Larabee Mills, 211 U. S. 612, 623;
Atlantic Coast Line Ry. Co. v. Georgia, 234 U. S. 280.

7. The intent to supersede the exercise by the State of its police power by Federal legislation is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the State.

Sarage v. Jones, 225 U. S 501, 533.

8. The settled rule as to the supremacy of an act of Congress is, that a statute enacted in execution of a reserved power of the State—the police power—is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts can not be reconciled or consistently stand together.

Savage v. Jones, 225 U. S. 501, 535;
Missouri, etc., R. Co. v. Haber, 169 U. S. 613, 623;
Sinnot v. Davenport, 22 How. 227, 243.

9. Nonaction of Congress, either directly or through a subordinate body, in respect to legislation upon the precise subject-matter of legislation enacted by the State by virtue of the police power, as in this case, is regarded as the equivalent of a declaration by Congress that, until it sees proper to legislate thereon, or the subordinate body to whom it has given authority to act does act, that the matter may be regulated by the authority of the State.

County of Mobile v. Kimball, 102 U. S. 691, 698;
Pittsburgh, etc., R. Co. v. Indiana, 223 U. S. 713;
Chicago, etc., R. Co. v. Arkansas, 219 U. S. 453, 561;
Mondou v. New York, etc., R. Co. 223, U. S. 1. 54-55;
Missouri, etc., R. Co. v. Larabee, etc., Co., 211 U. S. 612, 623;
Atlantic Coast Line Ry. Co. v. Georgia, 234 U. S. 280.

10. The act of March 6, 1909 (Acts 1909, p. 323) the headlight act in question, had for its object the protection of persons and property within the State from dangers arising from the operation on the railroads in this State of locomotives engines equipped with inadequate and inefficient headlights.

New York, etc., R. Co. v. New York, 165 U. S., 618, 631;
Atlantic, etc., R. Co. v. State, 135 Ga. 545, 32 L. R. A. (n. s.) 20, 29, affirmed 234 U. S. 280.

11. The court knows from the face of the headlight act in question that it has a real, substantial relation to an object as to which the State is competent to legislate, namely, the protection and security of persons and property on trains and on the railroad tracks within the State.

New York, etc., R. Co. v. New York, 165 U. S. 628, 632;
Chicago, etc., R. Co. v. Arkansas, 219 U. S. 453, 493;
Atlantic, etc., R. Co. v. Georgia, 234 U. S. 280.

12. It is common knowledge, and this court judicially knows, that it is a matter of great importance for the protection of persons and property in the train attached to a locomotive, persons and property on the track, and persons and property on other trains with which a collision may be had, that there should be an adequate and efficient headlight on such locomotive.

Atlantic, etc., R. Co. v. State, 135 Ga. 545, 32 L. R. A. (n. s.) 20, 31; affirmed 234 U. S. 280.

13. Where an act has been passed, in the exercise of the police power of the State, it can not be said that the limit of legislative power has been transcended, unless it clearly appears that the act has no substantial relation to a purpose.

Purity, etc., Co. v. Lynch 33, 226 U. S. 192, 33 U. S. Sup. Ct. 44.

14. It must be assumed that the Legislature, in the exercise of its judgment, was of opinion that an effectual mode for the protection of persons and property on a train attached to a locomotive, persons and property on the railroad track, and persons and property on other trains with which a collision may be had, was that there should be an adequate and efficient headlight on such locomotive.

Booth v. Illinois, 184 U. S. 425;
Purity Extract, etc., Co. v. Lynch, 226 U. S. 192;
Atlantic, etc., R. Co. v. State, 135 Ga. 545, 32 L. R. A. (n. s.) 20, 32, affirmed 234 U. S. 280.

15. The headlight act in question, being designed to protect persons and property endangered by the use of locomotives

equipped with inadequate and inefficient headlights, is strictly within the scope of the State's police power. So long as Congress has not legislated, either directly or through a subordinate body, upon the particular subject of headlights, the act should be regarded, not as a regulation of commerce, but as *legislation in aid of interstate commerce*, and as a rightful exercise of the police power of the State, although it controls, in some degree, the conduct and liability of those engaged in such commerce.

Chicago, etc., R. Co. v. Solan, 169 U. S. 133, 137-138;
New York, etc., R. Co. v. New York, 165 U. S. 628, 632;
Pennsylvania R. Co. v. Hughes, 191 U. S. 477; 490;
Lake Shore, etc., R. Co. v. Ohio, 173 U. S. 285, 300;
Chicago, etc., R. Co. v. Arkansas, 219 U. S. 453, 466;
Atlantic, etc., R. Co. v. Mazursky, 216 U. S. 122, 133;
Richmond, etc., R. Co. v. R. A. Patterson, etc., Co., 169 U. S. 311, 315;
Missouri Pacific Ry. Co. v. Larabee Mills, 211 U. S. 612;
Atlantic Coast Line Ry. Co. v. Georgia, 234 U. S. 280.

16. The act in question was designed to protect persons and property within this State. Appellant was created and owes its existence to the laws of the State. Whether appellant is an interstate carrier or not, so long as Congress, either directly or through a subordinate body, does not interfere, it must submit to reasonable State regulations in the use of its property. Otherwise would be to substitute government by a board of directors of the railroad for government by representatives of the people.

17. While Congress has acted indirectly, the Interstate Commerce Commission which has been given authority by Congress to establish regulations concerning headlights has not acted, and the situation remains unchanged and stands as it has always stood without regulation unless it be supplied by State authority.

Atlantic Coast Line Ry. Co. v. Georgia, 234 U. S. 280, 293.

18. The fact that Congress has entrusted power to the Interstate Commerce Commission does not, in the absence of action by the Commission, change the rule which existed prior to the delegation of power to it by Congress. A mere delegation by Congress to the Commission does not disturb the authority of the State. Until the Commission takes some action and establishes

regulations in regard to headlights, the authority of the State remains undisturbed. The mere grant by Congress to the Commission of certain national powers in respect to all the parts and appurtenances of the locomotives and tenders engaged in interstate commerce, does not of itself and in the absence of action by the Commission interfere with the authority of the State to make those regulations conducive to the welfare and convenience of its citizens.

Missouri Pacific Ry. v. Larabee Mills, 211, U. J. 612, 623.

II

The final order of the Railroad Commission of Indiana made and entered in pursuance to said act is not in violation of the Commerce Clause of Article 1 of the Constitution of the United States, nor of any rule or regulation of the Interstate Commerce Commission made and entered pursuant to Section 2 of the Act of Congress of March 4, 1914 (Public No. 318), Chapter 169, Sess. III, 63rd Congress, nor of any act of Congress enacted under authority of said Commerce Clause.

1. In support of this proposition, the defendant in error makes the same points and cites the same authorities as are made and cited under Proposition I hereinbefore set out.

2. While the Legislature cannot delegate its power to make the laws, it can make a law to delegate its power to determine some fact or state of things upon which the law makes or intends to make its own action depend.

Field v. Clark, 143 U. S. 649;
Buttfield v. Stranahan, 192 U. S. 470;
Union Bridge Co. v. United States, 204 U. S. 365.

3. The Legislature has the power to create agencies such as railroad commissions, city councils, town boards, county commissioners, and the like, and has the power to confer upon such agencies the power and authority to do certain things which are legislative and quasi-judicial in their nature. When such agencies act within the limits of the power or authority conferred, and in the manner pointed out by the statute, such acts are as valid and conclusive as if done by the Legislature itself.

Grand Trunk, etc., R. Co. v. Railroad Com. of Ind., 221 U. S. 400, 403.

4. By the act in question, it is not left to the Railroad Commission to determine whether locomotives shall be equipped with headlights or not. The headlights with which the locomotives are to be equipped is such a headlight as is most adequate and efficient for the protection of persons and property. The Legislature itself has fixed the standard of practicability and efficiency of headlights.

Field v. Clark, 143 U. S. 649;
Buttfield v. Stranahan, 192 U. S. 470, 496.

5. When the Railroad Commission acts it is in obedience to the command of the law. In obeying the command of the law, and ascertaining whether the headlights now in use are or are not adequate for the protection of persons and property, in finding that the oil headlights commonly in use on locomotives are inadequate for such protection and that headlights of greater illuminating power would be the most practical and efficient; and made its order for 1,500 candle-power headlights, it did not exercise legislative power.

6. As the Legislature possesses the power to regulate the business of railroads and prescribes the character of headlights to be used, it may endow a commission, or other administrative body, with power to that end, and what such commission or administrative body does within the powers granted is valid.

Atlantic, etc., R. Co. v. N. C. Railroad Commission, 206 U. S. l. 19, and cases there cited;
Atlantic C. L. Ry. v. Georgia, 34 Sup. Ct. Rep. 830;
N. Y. & N. E. Ry. v. Bristol, 151 U. S. 556;
C. B. & Q. Ry. v. Illinois, 200 U. S. 561;
McLean v. Arkansas, 211 U. S. 539;
C. B. & Q. Ry. v. McGuire, 219 U. S. 549;
Marshall Field & Co. v. Clark, 143 U. S. 649;
Buttfield v. Stranahan, 192 U. S. 470, 496;
Union Bridge Co. v. U. S., 204 U. S. 364, 383, et seq.;
Interstate Com. Commission v. Goodrich, etc., Co., 224 U. S. 194, 214.

7. The fact that in order to comply with the order of the Commission appellant would be required to equip its locomotive engines which are engaged in interstate commerce with headlights of not less than 1,500 candle-power would not make said order void as being violative of the Commerce Clause of Article 1 of the Constitution of the United States. The order was made

in compliance with an act of the Legislature, acting under the police power of the State. Congress has not, by any act, prescribed the kind of headlight with which locomotives shall be equipped. The order can be complied with without in any manner conflicting with any act of Congress, or embarassing the execution of any such act. Therefore, the Commerce Clause of the Constitution is not violated by the order.

8. The order of the Commission in question is a legislative act, by an instrumentality or agency of the State, exercising delegated authority, and is of the same force as if made by the Legislature, and is a law for all practical purposes.

> Grand Trunk, etc., R. Co. v. Railroad Com. of Ind., 221 U. S. 400, 403.

9. The statute not being open to the constitutional objection urged against it, and the order of the Commission not being beyond the power the Commission could constitutionally exercise nor beyond the power conferred by the Headlight Act, the order is not inherently void, and was conclusive as against collateral attack by injunction.

> Interstate Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 547.

III.

The act is not in violation of the 14th Amendment to the Constitution of the United States on the ground that it authorizes the Railroad Commission to make and enforce orders against the plaintiff in error without notice and a hearing, thereby depriving plaintiff in error of its property without due process of law, and denies it the equal protection of the law.

1. The act does not contemplate the filing of a complaint. The Commission is "empowered, authorized and directed" by the Legislature to act "as soon as practicable," and the fact that no complaint was ever filed, but the action of the Commission was solely and alone upon the motion of said defendant in error, does not make the order of the Commission invalid, nor form a basis for injunctive relief.

2. The act in question in this case (Acts 1909, p. 323), was held by the Supreme Court of Indiana to be supplemental to the Railroad Commission Act of 1905 (Acts 1905, p. 83), and acts

amendatory thereto, which provides for notice and makes provision for the method to be pursued by railroad companies dissatisfied with an order of the Commission.

Vandalia Ry. Co. v. Railroad Commission, 182 Ind. 382, 392, and sections cited;
Transcript of the Record, pp. 36 and 37.

3. Although the particular act (Acts, 1909, p. 323) which authorizes an order of the railroad commission may not provide for a hearing, if the Supreme Court of Indiana has construed that act as part of the law establishing the Commission, which does require notice and gives to the railroad company its day in court by prescribing the procedure where a railroad company is dissatisfied with an order of the Commission, such act is not unconstitutional under the 14th Amendment as denying an opportunity to be heard.

Wadley Southern Ry. Co. v. Georgia, 235 U. S. 651, 658;
L. & N. Ry. Co. v. Garrett, 231 U. S. 298;
Watson v. Maryland, 218 (U. S.) 173.

(a) The State has full power over remedies and procedure in its own courts, and can make any order it pleases in respect thereto, provided that substance of right is secured.

York v. Texas, 137 U. S. 15;
Antoni v. Greenhow, 107 U. S. 769.

(b) The 14th Amendment does not control the power of a state to determine the form of procedure by which legal rights may be ascertained, if the method adopted gives reasonable notice and affords a fair opportunity to be heard.

Iowa Central Ry. Co. v. Iowa, 160 U. S. 389;
Long Island Water Supply Co. v. Brooklyn, 166 U. S., 685;
Wilson v. North Carolina, 169 U. S., 586;
L. & N. Ry. Co. v. Schmidt, 177 U. S. 230;
Hooker v. Los Angeles, 188 U. S. 314.

(c) The legislature, by the aid of committees appointed to investigate the subject, could have prescribed the kind of headlight without depriving the plaintiff in error of its property with-

out due process of law, and, if the legislature could have done this without notice to the plaintiff in error, or without giving it a chance to be heard, then it could delegate the power to make such regulation in the same manner to the Railroad Commission.

Davidson v. New Orleans, 96 U. S. 97;
Railroad Commission Cases, 116 U. S. 307.

4. The statute provides the method to be pursued where the railroad company is dissatisfied with a final order of the commission; and, by which the orders of the commission are enforced —"by appropriate actions at law or suits in equity instituted and prosecuted in some court of competent jurisdiction"—and gives appellant its "day in court".

Secs. 5533, 5536, 5541, 5544, 5548 and 5550 Burns, Indiana R. S. 1914;
New York, etc., R. Co. v. New York, 165 U. S. 628, 633, 634.

5. The action of the commission is legislative in its character, made pursuant to an act passed by the General Assembly under the police power of the State, and appellant was not entitled, as of right, to a hearing on the question whether the Commission should investigate the condition and efficiency of headlights, or on the question of whether the order should be passed.

Davidson v. New Orleans, 96 U. S. 97.

6. The act was a legitimate exercise of the police power of the State.

Holden v. Hardy, 169 U. S. 366, 398.

7. The 14th Amendment to the Federal Constitution did not have the effect of taking away the police power of the State which was reserved to the State at the original adoption of the Constitution. And said amendment was not designed to interfere with the power of the State, under its police power, to enact laws for the protection of persons and property within the State.

Barbier v. Connolly, 113 U. S. 31;
Mugler v. Kansas, 123 U. S. 633;
Jones v. Brim, 165 U. S. 180, 182;
Powell v. Pennsylvania, 127 U. S. 678, 683.

8. The proceeding before the Commission was not without notice to appellant, as it is alleged in the complaint that the Commission issued notice to appellant.

Trans. of the Record, p. 2 (4);
Trans. of the Record, p. 7 (14).

9. The fact that the Headlight Act only applies to steam railroads, and not to interurban railroads, does not make the act violative of Section 1 of the 14th Amendment of the Constitution of the United States, as special class legislation. Such a classification is valid.

(a) There is such an inherent difference between steam railroads and interurban railroads as justifies placing them in different classes for certain legislative purposes.

Erb v. Morasch, 177 U. S. 584;
Atlantic, etc., R. Co. v. State, 135 Ga. 545; 32 L. R. A. (n. s.) 20, 29, Affirmed 234 U. S. 280.

(b) The only limitation upon the legislative power to make a classification is that it must not be capricious, but rest upon some substantial ground or reason existing in and arising from the subject-matter, and that the law passed pursuant to such classification be so framed as to operate alike upon all within the class. The question arising for the judiciary is, whether the exercise of that power is arbitrary or oppressive.

Otis v. Parker, 187 U. S. 606;
Watson v. Maryland, 218 U. S. 173, 177;
McLean v. Arkansas, 211 U. S. 539, 547.

(c) When reason for the classification appears to exist, the propriety of the classification is purely a legislative question. If a law has a reasonable relation to the protection of the public health, safety or welfare, it is not to be set aside because the judiciary may differ with the Legislature in its views of the policy, wisdom or expediency of the law.

Otis v. Parker, 187 U. S. 606;
Watson v. Maryland, 218 U. S. 173, 177;
McLean v. Arkansas, 211 U. S. 539, 547;
Munn v. Illinois, 94 U. S. 113;
Wisconsin, etc., Ry. Co. v. Jacobson, 179 U. S. 287, 301.

(d) The Headlight Law does not grant a privilege, nor extend immunity. It simply requires that railway management shall observe a given rule, intended for the protection of persons and property within the State. To require locomotives to be equipped with a certain kind of headlights is not arbitrary or unreasonable, but is justified by public necessity, and the fact that such a law, or order, compels the disuse of a material part of a railroad's present equipment and the substitution of a new appliance, does not make such a law, or order, arbitrary and unreasonable. All property is held subject to the police regulations of the state.

Atlantic Coast line Ry. v. Georgia, 234 U. S. 280;
Chicago, B. & Q. Ry. Co. v. Illinois, 200 U. S. 561;
New York, N. H. & H. Ry. Co. v. New York, 165 U. S. 628;
Munn v. Illinois, 94 U. S. 113;
Missouri Pac. Ry. Co. v. Humes, 115 U. S. 512.

(e) The constitutional inhibition that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class from being singled out as a special subject of hostile or discriminating legislation.

McPherson v. Blacher, 146 U. S., 139;
Pembina, etc., Co. v. Pennsylvania, 125 U. S. 181;
Atlantic, etc., Ry. Co. v. States, 135 Ga. 545, 32 L. R. A. (n. s.) 20, 29-30; affirmed 234 U. S. 280.

(f) The equal protection of the laws which the complainant may claim is only such as is accorded to similar railroad companies within the jurisdiction of the State.

Pembina, etc., Co. v. Pennsylvania, 125 U. S. 181;
McLean v. Arkansas, 211 U. S. 539, 551.

(g) Legislation which, in carrying out a public purpose, is limited in its application, if within its sphere of operation it affects alike all persons similarly situated, is not within the inhibition of the 14th Amendment of the Federal Constitution that no State shall "deny to any person within its jurisdiction the equal protection of the laws".

Barbier v. Connolly, 113 U. S. 27, 32;
Marchant v. Pennsylvania R. Co., 156 U. S. 380, 390.

1. Under the statute referred to in complainant's bill, all railroads similarly situated, coming within the sphere of operation of the statute are treated alike. None is singled out as a special subject of any hostile or discriminatory legislation. The objection to the law, therefore, upon this ground is untenable.

IV.

The final order of the Railroad Commission of Indiana made and entered in pursuance to said act is not in violation of the 14th Amendment to the Constitution of the United States.

1. The Legislature could delegate certain powers to the Railroad Commission, and in support of the contention that the powers so delegated were within those which could be given to a subordinate body, the defendant in error makes the same points and cites the same authorities as are made and cited under Proposition II hereinbefore set out.

2. The final order of the Railroad Commission did not deprive the plaintiff in error of its property without due process of law, nor deny to it the equal protection of the law, and in support of this contention the defendant in error makes the same points and cites the same authorities as are made and cited under Proposition III hereinbefore set out.

V.

The order of the Railroad Commission is not void by reason of being vague, indefinite and uncertain in its description of the headlight with which it requires locomotive engines to be equipped.

1. The Supreme Court of Indiana, in the decision below in this cause, held that the said order was not open to the objection that it was indefinite and uncertain, but that the terms used therein had certain well defined meanings that could be ascertained on inquiry.

Vandalia Ry. Co. v. Railroad Commission, 182 Ind. 382, 393;
Transcript of the Record, p. 37.

2. An order made and entered by the Railroad Commission, under authority conferred upon it by the Legislature, is a State law within the meaning of the Federal Constitution and the Judicial Code.

Reiman v. Little Rock, 237 U. S. 171, 176;
Atlantic Coast Line v. Goldsboro, 232 U. S. 548, 555.

3. The exposition of the acts of the State Legislature, or of an order made and entered thereunder by a subordinate body upon whom authority has been conferred to do so, is the peculiar and appropriate duty of the State courts.

Hallinger v. Davis, 146 U. S. 314, 319;
Miller v. Ammon, 145 U. S. 421;
Watson v. Maryland, 218 U. S. 173;
Baltimore Traction Co. v. Baltimore Belt Ry. Co., 151 U. S. 137, and cases cited.

4. When the highest court of a State has passed upon the meaning of a statute, or an order made and entered by a subordinate body upon whom the Legislature has conferred power to prescribe regulations and pass upon the matters contained in such order, and such statute has been held to be definite and certain and not inoperative or invalid, such decision and interpretation is conclusive and cannot be disturbed on writ of error to the Supreme Court of the United States.

Booth v. Indiana, 237 U. S. 391, 397;
Smiley v. Kansas, 196 U. S. 447, 455;
Hallinger v. Davis, 146 U. S. 314, 319;
Miller v. Ammon, 145 U. S. 421;
Watson v. Maryland, 218 U. S. 173, 175;
Baltimore Traction Co. v. Baltimore Belt Ry. Co., 151 U. S. 137 and cases cited.

5. The description of the headlight as stated in the order is "headlights of not less than fifteen hundred (1,500) candle power". "Headlights of not less than 1,500 candle power," *is a certain and definite description.*

6. The same rules apply in the interpretation and construction of orders of the Commission and city ordinances, as apply in the interpretation and construction of statutes.

7. If the language is clear and admits of but one meaning, the act is presumed to mean what has been plainly expressed. The rule then is, *the law is so written.* There is no room for construction.

Fisher v. Bligh, 2 Cranch. 399.

8. Where the language of the order is capable of more than one meaning, it is to be taken in that sense which will harmonize the intention and object of the order, and effect the purpose of the order.

26 Am. and Eng. Ency. of Law (2d ed.) p. 602 (4).

9. The rule cannot be that that order means, either, that the initial source of light—the lamp in the headlight—shall be not less than 1,500 candle power, or, that it means the headlight shall produce an illumination of not less than 1,500 candle power—that as it means one or the other, it is void and means nothing, because uncertain.

The rule is that the order cannot be nullified on the ground of uncertainty, if susceptible of any reasonable construction.

26 Am. & Eng. Ency. of Law (2d ed.) p. 657 (2).

10. An order of the Railroad Commission is not void for want of clearness of expression or on account of a difficulty in construing or applying its provisions.

11. In construing the order of the Commission to determine the standard of duty required, the rule is that any uncertainty must cut down the operation of the order within the clear requirements of its provisions.

(a) Applying these rules to the finding and order of the Commission, the standard fixed by the order cannot be said to be so indefinite and uncertain as to render the order void.

12. The primary object of the act of March 6, 1909, was to promote the public welfare by securing the safety of employes and travelers, and the protection of persons and property, and it is in that aspect remedial.

Johnson v. Southern Pac. R. Co., 196 U. S. l. 17.

13. The design of the statute to give protection and relief is more dominant than to inflict punishment, and the construction of the act falls within the rule applicable to statutes to prevent fraud upon the revenue, and for the collection of customs—that rule not requiring the absolute strictness of construction.

Johnson v. Southern Pac. R. Co., 196 U. S. l. 17.

14. In actions other than one to recover a penalty, laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not penal acts, although they may inflict a penalty for violating them. Such statutes are deemed remedial, and should be construed so as most effectually to accomplish the intention of the legislature in passing them.

Taylor v. United States, 3 How. 197, 210;
1 Blackstone Com. 88 (Sharewood ed. and notes thereunder);
Cliquot v. United States, 3 Wall. 114, 145;
United States v. Hodson, 10 Wall, 395, 406;
Bones v. Booth, 2 W. Bl. 1226;
Turner v. Warren, 2 Strange, 1079.

15. In actions to recover a penalty, the statute providing the penalty is construed strictly. By this is meant only that they are not to be so extended by implication, and beyond the legitimate import of the words used, as to embrace cases or acts not clearly described by such words. They are not to be made to involve an absurdity, or frustrate the design of the legislators.

16. It is not alleged in either the first or second paragraphs of complaint, that the headlights on any of appellant's locomotives were oil headlights; or, that appellant had ever used an oil headlight; or that it intended or contemplated using oil headlights. The appellant has alleged no fact, therefore, tending to show that it would be affected in any manner by the Commission's order. Before appellant can ask the court to declare the Commission's order void, it must allege facts showing that it would be injuriously affected by the order.

Collins v. Texas, 223 U. S. 288, 295.

17. If the order was indefinite and uncertain because it wholly fails to specify at what distance from the source of light the illuminating power of the same is to be measured, or at what angle from a horizontal or vertical plane, if either, the same is to be measured, or was in other respects uncertain, unjust or oppressive, it should have sought relief by applying to the Commission for a modification of the order. For such redress application must be made to the Commission that has power to grant the redress, and rely on its "power and duty to modify its order if the new evidence warranted such a change".

Red "C" etc., Co. v. Board of Agriculture, 222 U. S. 380, 396;
Interstate Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 550.

EVAN B. STOTSENBURG,
Attorney-General,
Attorney for Defendant in Error.

BURT NEW,
WILBUR T. GRUBER,
Of Counsel.

locomotives employed in interstate commerce. *Atlantic Coast Line* v. *Georgia*, 234 U. S. 280.

A judgment which correctly refused injunctive relief against such state regulation may not be attacked on writ of error as a judgment infringing federal rights (Judicial Code, § 237), upon the ground that the same field of regulation has since been occupied by the federal Government under an act of Congress enacted after the judgment was rendered.

The question whether, because of the Act of 1915, *supra*, or action of the Interstate Commerce Commission thereunder, further enforcement of the order of the state commission here involved would infringe the plaintiff's rights, may be raised and determined in another action without prejudice from this one.

An order of a state commission requiring a carrier to equip its locomotives with headlights of a specified minimum candle-power is not objectionable as lacking due process, when made on notice and full hearing, and where the law under which the commission acted afforded opportunity for review in the courts, of which the complaining carrier availed itself.

Complaint that such an order is so indefinite and uncertain as to amount to a denial of due process will not be heard where the party complaining failed to take advantage of a legal opportunity to have the order revised through a rehearing before the commission.

182 Indiana, 382, affirmed.

THE case is stated in the opinion.

Mr. Samuel O. Pickens, *Mr. F. D. McKenney*, *Mr. D. P. Williams* and *Mr. Owen Pickens* for plaintiff in error.

Mr. Evan B. Stotsenburg, Attorney General of the State of Indiana, *Mr. Bert Winters*, *Mr. Burt New*, and *Mr. Wilbur T. Gruber* for defendant in error.

MR. JUSTICE PITNEY delivered the opinion of the court.

The Railroad Commission of Indiana was created and broad powers were conferred upon it by an act approved February 28, 1905, and an amendatory act approved March 9, 1907. Acts 1905, p. 83; Acts 1907, p. 454; Burns'

Ann. Ind. Stats. 1908, §§ 5531 *et seq.* By a later act (Acts 1909, p. 323), the Commission was specifically authorized and directed to investigate the condition and efficiency of headlights then in use on locomotive engines on the railroads in the State, determine the most practicable and efficient headlight for all purposes, and make and enforce against the railroad companies the necessary orders for the installation of such headlights. Pursuant to this authority it conducted an investigation, upon notice to plaintiff in error and all other steam railroad companies operating in the State, the result of which was an order, made January 6, 1910, reciting the investigation, declaring that the oil headlights commonly in use were inadequate for the protection of persons and property, and ordering that all engines used in the transportation of trains over any line of railroad in the State should be equipped "with headlights of not less than fifteen hundred candle power." About one month thereafter plaintiff in error brought an action in a state court of competent jurisdiction seeking to enjoin enforcement of the order upon the ground that the Act of 1909 and the order made pursuant to it were repugnant to the "commerce clause" of the Constitution of the United States and the statutes enacted thereunder, and to the "due process clause" of the Fourteenth Amendment. Among other grounds of attack it was averred that the order was so vague, indefinite, and uncertain in its description of the headlight required as to be meaningless and void, because it failed to specify at what distance from the source of light the illuminating power was to be measured, and whether it was to be determined by averaging the intensity of the light at a given distance from its source, and if so at what distance; that the order did not specify the character of the reflector, nor whether the required candle-power might be developed by reflectors or lenses, or whether the light must be of 1500 candle-power independent of such lenses or re-

flectors; it being averred that each of these elements was an essential factor in the ascertainment and measurement of the illuminating capacity of headlights, and that there was no known standard by which such capacity might be measured and expressed in terms of candle-power in the absence of those factors. From an amended complaint, and from the Commission's answer thereto, it was made to appear that after the making of the order Mr. Houghton, chairman of a committee appointed to represent the plaintiff and the other railroad companies named in the order with respect to presenting a petition to the Commission for a modification of its provisions, made written application to the Commission for a suspension of the order and a further hearing upon the subject; that the Commission replied that under the statute and the practice of the Commission it had authority to alter, change, or modify any final order made by it, and that the Commission would not suspend the order in question, but would treat Mr. Houghton's communication as an application for its modification, and specifying a time for the hearing of that application; that on the date specified the carriers appeared by Mr. Houghton, chairman of the committee, and by counsel, and withdrew the application for modification, whereupon it was dismissed. Plaintiff demurred to the answer, the demurrer was overruled, and, plaintiff refusing to plead further, final judgment was rendered against it, and, on appeal, this was affirmed by the Supreme Court of Indiana; that court holding that plaintiff's complaint did not show ground for the relief sought. 182 Indiana, 382. The case comes here upon the federal questions, under § 237, Jud. Code.

So far as the attack upon the Act of 1909 and the order made pursuant to it is based upon interference with interstate commerce, it very properly is conceded that, but for a recent act of Congress, the case would be controlled by *Atlantic Coast Line R. R. Co.* v. *Georgia*, 234 U. S. 280, 290,

where it was held that in the absence of federal legislation the States are at liberty, in the exercise of their police power, to establish regulations for securing safety in the physical operation of railroad trains within their territory, even though such trains are used in interstate commerce, and that (p. 293) the Safety Appliance Acts of Congress, since they provided no regulations for locomotive headlights, showed no intent to supersede the exercise of state power with respect to this subject.

But it is insisted that this decision is no longer controlling, because Congress has since then "exercised its power as to equipment over the entire locomotive and tender and all parts and appurtenances thereof." The reference is to the Act of March 4, 1915, c. 169, 38 Stat. 1192, amendatory of the Act of February 17, 1911, requiring common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto, c. 103, 36 Stat. 913. The latter act was among those referred to in the *Georgia Case*, and held not to oust the authority of the State because it did not appear either that Congress had acted, or that the Interstate Commerce Commission, under the authority of Congress, had established any regulations concerning headlights. The amendment of 1915 extends the provisions respecting inspection, etc., to the entire locomotive and all its appurtenances. Whether those provisions authorize the Interstate Commerce Commission to prescribe any particular type of headlight, or other appliance, is a question upon which we need not now pass, for the reason that the decision of the Supreme Court of Indiana, refusing an injunction to restrain the enforcement of the state commission's order, was rendered and judgment thereon entered before the passage by Congress of the act referred to. Obviously, we cannot say that by that decision and judgment any right of plaintiff in error under a law of the United States was infringed, within the mean-